SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 118

CARLOS ALVAREZ GARCIA, PETITIONER,

vs.

H. R. LANDON, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 14788

CARLOS ALVAREZ GARCIA, also known as CARLOS GARCIA-ALVAREZ, Plaintiff,

vs.

H. R. LANDON, DISTRICT DIRECTOR IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE DISTRICT No. 16, Defendant

PETITION FOR WRIT OF HABEAS CORPUS—Filed December 1, 1952

To the Honorable Judges of the United States District Court in and for the Southern District of California, Central Division:

The verified petition of Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez respectfully shows:

I

That said Carlos Alvarez Garcia is unlawfully im-
[fol. 2] prisoned, detained, held and restrained of his liberty by H. R. Landon, District Director of the Immigration and Naturalization Service, Department of Justice, District No. 16 at Los Angeles, California and within the jurisdiction of the above-entitled Court.

II

That said imprisonment, detention, confinement and restraint is illegal and unlawful and the illegality thereof consists in this, to wit:

III

That the said Carlos Alvarez-Garcia was, on or about the 14th day of August, 1952 arrested by the officers of Immigration and Naturalization Service at Los Angeles, California pursuant to an order for the arrest of said Carlos

Alvarez Garcia issued over the signature of the defendant H. R. Landon, District Director of Immigration and Naturalization.

That said warrant of arrest charged the said Carlos Alvarez Garcia with being illegally in the United States and subject to deportation for having been, prior to his re-entry into the United States on May 15th, 1949 "an alien who was a member of the Communist Party of the United [fol. 3] States" as set forth in Section 1 of the Act of October 16, 1918, as amended.

That plaintiff was given a "hearing" during which evidence was admitted that when plaintiff registered as an alien in 1940 "he was at that time a member of the Communist Party of the United States, and also secretary of a local of the Workers Alliance of America at Los Angeles, California; and that he, Carlos Alvarez Garcia, has also admitted that he is a subscriber of the "People's World", an organ of the Communist Party published at Los Angeles, Calif." That said Workers Alliance of America has been designated by the Attorney General as a Communist organization pursuant to Executive Order 9835."

Plaintiff's connection with the Worker's Alliance of America, as brought out in cross-examination, came about through his efforts to secure food and clothing for his seven United States born minor children in 1939 and early 1940 when he was unemployed, and since obtaining steady employment with the Southern Pacific Railroad Co. in 1940 plaintiff had nothing to do with either the Workers Alliance of America or any other organization. It is on the basis of his having been a member of the Workers Alliance of America that the hearing Officer made a finding that plaintiff was a member of the Communist Party of the [fol. 4] United States, since, according to said Hearing Officer's decision "It is noted that the Workers Alliance was designated a Communist organization by the Attorney General pursuant to Executive Order 9835."

Counsel for the plaintiff wishes to call the attention of this Honorable Court to the fact that Executive Order No. 9835 was not issued until March 25th, 1947.

To say that plaintiff in 1940 or 1941 could be responsible for acts committed by an organization in 1947 at which

time he was neither a member nor affiliated therewith, would be, to say the least, ridiculous.

Counsel for the plaintiff has heretofore filed a Petition for a Writ of Habeas Corpus on behalf of Carlos Alvarez Garcia, which was case No. 14436 H in the files of the above-entitled Court, in which case the Hon. Harry Webster, Judge Presiding, ordered the plaintiff, after a full hearing on September 3rd, 4th and 5th, 1952, released upon posting of a United States Treasury Bond in the sum of $1,000.00, the District Director of Immigration and Naturalization having failed to produce the so called "confidential information indicating that the said Carlos Alvarez Garcia was a member of the Los Angeles County branch of the Communist Party of the United States in 1947" . . .

[fol. 5] Wherefore petitioner respectfully prays that a Writ of Habeas Corpus may be granted directed to said H. R. Landon, District Director of Immigration at Los Angeles, California commanding him to have the body of said Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez before this Honorable Court at a time and place to be therein specified to do and receive what shall then and there be considered by this Honorable Court concerning said Carlos Alvarez Garcia, together with the cause and time of his detention, and that pending the hearing of said Writ of Habeas Corpus the defendant H. R. Landon, District Director of Immigration and Naturalization be restrained and enjoined from deporting the said Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez, and that the said Carlos Alvarez Garcia may be restored to his liberty.

Dated at Los Angeles, California this 1st day of December, 1952.

Harry Wolpin, Attorney for the Plaintiff.

[File endorsement omitted.]

[fol. 6] IN UNITED STATES DISTRICT COURT

POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS—Filed December 1, 1952

The Hearing Officer's decision to deport the petitioner is based on his having been a member of the Workers Alliance, an affiliate of the Communist Party of America: that said membership was:

> "about 1939 and thereafter remained a member until 1940 or the beginning of 1941. During that membership he was a secretary of Local U 1034 of the Workers Alliance. It is noted that the Workers Alliance was designated a Communist organization by the Attorney General pursuant to Executive Order 9835" (Hearing Officer's Decision.)

Counsel for the petitioner wishes to call the attention of this Honorable Court to the fact that it was not until March 25th, 1947 at this time for the acts of an organization of which he was a member in 1940 or 1941 because the same organization was designated as a Communist affiliate in 1947, at which time he was neither a member thereof or affiliated therewith, smacks very much of ex post facto.

As the Circuit Court of Appeals said in the case of Del Guercia vs. Gabot, 161 Fed. (2d) 559 at page 561. (C.C.A. [fol. 7] Cal. 1947):

> "We agree with the trial judge. The law does not favor the retroactive application of statutes. Ex post facto application of criminal law is prohibited by the United States Constitution. Of course, the issue here is not concerned with the subject of ex post facto law, yet it approaches it in principle, for if the Director is right, the appellee is to be forceably deported only by the retrospective application of the law which has constituted a perfectly legal act, when done, a necessary element for the deportation."

In the appeal of the case of Di Pasquale v. Karnuth 2 Cir., 158 Fed. (2d) 878, a deportation case under the same statute, there is apt language. On page 879, it is said:

> "Caprice in the incidence of punishment is one of the indicia of tyranny, and nothing can be more dis-

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ingenious than to say that *deportation in these circumstances is not punishment.* It is well that we should be free to rid ourselves of those who abuse our hospitality but it is more important that the continued enjoyment of that hospitality once granted, shall not be subject to meaningless and irrational hazards."

[fol. 8] In the case at bar the plaintiff has been a legal resident of the United States since June 15th, 1922, is the father of ten (10) native born children, nine of whom are totally dependent upon him for support. To deprive him at this time, on the basis of an Executive Order issued — 1940 or 1941 a Communist affiliate is not only inhuman, but also *a*llegal.

To begin with, the world situation has materially changed since 1941. In 1941 Russia was in a death struggle with our common enemy—Germany. In 1941 the Communist Party of America was a recognized political party which this Court decided was lawfully placed on the ballot. To deport the plaintiff at this time for belonging to an organization which was not proscribed at the time that he was a member thereof, for acts of said organization done years after he no longer has anything to do with it is certainly not in accordance with the American concept of fair play.

Respectfully submitted, Harry Wolpin, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE—Filed December 1, 1952

Upon reading the verified Petition for Writ of Habeas Corpus on file herein and good cause appearing therefore

It is hereby ordered that the defendant H. R. Landon, District Director of Immigration and Naturalization do be and appear before this Court in Room 8 thereof, located in the New Post Office Building, Temple and Spring Streets in the City of Los Angeles and State of California at the

hour of 10 A. M. on the 8 day of December, 1952, to show cause if any why a Writ of Habeas Corpus should not be granted commanding said H. R. Landon, as District Director of Immigration and Naturalization to produce the body of said Carlos Garcia-Alvarez, also known as Carlos Garcia-Alvarez before this Court.

It is further ordered that pending the hearing of said Order to Show Cause the defendant H. R. Landon, District Director of Immigration and Naturalization be and is hereby restrained and enjoined from deporting said Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez.

Dated at Los Angeles, California this 1st day of Dec. 1952.

Ben Harrison, Judge of the United States District Court.

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

RETURN TO ORDER TO SHOW CAUSE—Filed Dec. 4, 1952

H. R. Landon, District Director of Immigration and Naturalization Service, Department of Justice, District No. 16, respondent herein, as and for his answer to the Order to Show Cause why a Writ of Habeas Corpus should not be granted in the above entitled case, and having first been duly sworn, admits denies and alleges as follows:

I

Answering paragraph I of petitioner's Petition for Writ of Habeas Corpus, respondent denies that the petitioner is unlawfully imprisoned, detained and restrained of his liberty, and alleges that the petitioner is in respondent's proper and lawful custody under a warrant of deportation issued on October 29, 1952, by authority of the Attorney General, under 8 U. S. A., 137, charging that petitioner is subject to deportation under the provisions of the Act of October 16, 1918, as amended, in that he has been, prior

to entry, a member of the following class, set forth in Section I of said Act: an alien who was a member of the [fol. 11] Communist Party of the United States, as will more fully appear from a copy of said warrant of deportation, marked Exhibit "A", attached hereto and made a part hereof, as though fully set out herein.

II

Answering paragraph II of said petition, and particularly those paragraphs on page 2 thereof, beginning on line 3 and continuing through line 24 respondent admits the allegations therein contained, except that respondent denies the first allegation in paragraph II that said imprisonment, detention, confinement and restraint is illegal and unlawful.

III

Further answering paragraph II of said petition, and specifically the paragraph beginning at line 25 on page 2 and continuing through line 7 on page 3, respondent neither admits nor denies the allegations contained therein pertaining to the reasons for petitioner's connection with the Workers Alliance of America and says that they are irrelevant and asks that they be stricken from the petition. Respondent denies, however, that it is on the basis of petitioner's having been a member of the Workers Alliance of America that the Hearing Officer made a finding that the [fol. 12] petitioner was a member of the Communist Party of the United States and alleges in this connection that petitioner's testimony contains unequivocal admissions that he was a voluntary member of the Communist Party of the United States for approximately two years from 1939 to the end of 1940, and that petitioner's separate and distinct membership in the Workers Alliance of America is but corroborative evidence, unnecessary to support the finding of membership in the Communist Party admitted by the petitioner.

IV

Respondent admits the allegations contained in the paragraph beginning on page 3, commencing with line 8, of said petition.

V

Answering the paragraph on page 3, beginning with line ii, respondent alleges that it is not sought to hold the petitioner responsible for acts committed by an organization in 1947, as alleged therein. Respondent alleges however, that the petitioner's past membership in the Communist Party is sufficient to sustain an order of deportation.

VI

Answering the paragraph commencing on line 15 on page 3 of said petition, respondent admits that petitioner has heretofore filed a Petition for Writ of Habeas Corpus, [fol. 13] but alleges that the sole purpose of said petition for Writ of Habeas Corpus was to determine whether or not the bond set for his release was reasonable. Respondent further alleges that the matters referred to therein are immaterial to this hearing and denies that there was any finding by the Court that the petitioner was not a member of the Communist Party of the United States.

For a Further, Separate, Second and Affirmative Defense Defendant Alleges:

I

That the petitioner is an alien, a native and citizen of Mexico.

II

That the petitioner last entered the United States on May 15, 1949, at San Ysidro, California.

III

That the petitioner voluntarily became a member of the Communist Party of the United States at Los Angeles, California, about or during 1939, and maintained that membership continuously for a period of approximately two years thereafter, as will more fully appear from the ad- [fol. 14] missions of the petitioner contained in the transcripts of the hearing before the Immigration and Naturalization Service, certified copies of which are attached hereto, marked Exhibit "B", and made a part hereof, as though fully set out herein.

IV

That under Section 19 of the Immigration Act of 1917 and Sections 1 and 4 of the Act of October 16, 1918, as amended, the petitioner is subject to deportation on the ground that he has been, prior to entry, a member of the following class, set forth in Section 1 of said Act of October 16, 1918: an alien who was a member of the Communist Party of the United States.

Wherefore, respondent prays that the Petition for Writ of Habeas Corpus be denied, and the Order to Show Cause herein discharged.

H. R. Landon, District Director of Immigration and Naturalization Service, Department of Justice, District No. 16.

Duly sworn to by Edmund L. Smith. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 14a] RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES—Filed December 4, 1952

The petitioner has been ordered deported by reason of his past membership in the Communist Party. Petitioner is an alien who last entered the United States on May 15, 1949. Since his membership in the Communist Party was previous to this date, his grounds of deportability is based on the Act of October 16, 1918, as amended, in that he has been, *prior to entry*, a member of the Communist Party of the United States.

The fact that the charge contains the statement, membership "prior to entry" is hardly material or controlling, in that the statutes hereinafter cited cover deportation of an alien who was *at the time of entering* the United States or *has been at any time thereafter a member* * * * .

Statutes Involved

Sections 137, 137-3 and 155 of Title 8, U.S.C.A., provide in pertinent part as follows:

"Sec. 137. Same, subversive aliens

Any alien who is a member of any one of the following classes shall be excluded from admission into the United States: * * *

(2) Aliens who, at any time, shall be or shall have been [fol. 14b] members of any of the following classes: * * * (c) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt;

* * *"

"Sec. 147-3. Deportation of subversive aliens

(a) Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in * * * Section 137(a) of this title, shall upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provision of this section shall be applicable to the classes of aliens mentioned in section 137 to 137-8 of this title, irrespective of the time of their entry into the United [fol. 14c] States * * *"

"Section. 155. Deportation of undesirable aliens generally * * * In every case where any person is ordered deported from the United States under the provisions of this chapter or of any law or treaty, the decision of the Attorney General shall be final. * * *"

Statement of Facts

Petitioner is a native and national of Mexico, born in Encarnacion de Valla, Jalisco, Mexico, November 4, 1903 (Statement under oath of 6-19-52, Page 2). He was lawfully admitted to the United States for permanent residence at El Paso, Texas on June 15, 1922. He has resided continuously in this country since that date, except for visits to Mexico, his last such entry being on May 15, 1949 at San Ysidro, California.

He has admitted that he was a member of the Communist Party of the United States for a period of two years covering 1939 and 1940. (Statement under oath 6-19-52, page 3, and pages 5, 9 and 10, Transcript of Hearing of 8-18-52).

While the petitioner has also admitted membership in the Workers Alliance of America, an organization designated as Communist by the Attorney General pursuant to [fol. 14d] Executive Order 9835, and has also admitted subscribing to the "Daily People's World", these facts are but corroborative coloration of a membership in the Communist Party. There is no confusion in petitioner's mind of a membership in the two organizations, his testimony indicating a clear understanding that he belonged to *both* the Communist Party of the United States *and* the Workers Alliance of America. This statement is made to alert the Court to the attempt of petitioner's counsel to confuse the issues by basing his objections to the finding of deportability upon a miscalculated importance of the Workers Alliance to the entire picture.

The Law

Since the amendments contained in the Internal Security Act, referred to as the McCarran Act in 1950, mere membership in the Communist Praty in the case of an alien is cause for deportation. It is not necessary in such cases for the Government to prove the nature of the Communist Party or the motives with which the alien joined that party, or the alien's beliefs with respect to the principles of that party. Under this legislation, the only issue is whether the alien had been at any time after entry or before entry, a member of the Communist Party of the United States. If the evidence establishes that fact, the statute directs his

[fol. 14e] deportation. The record of deportation hearing in the case at bar shows that the petitioner made statements under oath before an officer of the Immigration and Naturalization Service, first in a preliminary statement made on June 19, 1952 and reiterated and approved in the hearing and deportation proceedings on September 18, 1952. Each of the statements was taked in question and answer form, recorded in writing, and the first statement was signed by the petitioner.

There can be no question, therefore, that the Order for the Plaintiff's Deportation is supported by evidence.

The Supreme Court in *Carlson v. Landon*, an appeal from the Ninth Circuit, 342 U.S. 524, has upheld mere membership in the Communist Party by an alien as grounds for deportation. Mr. Justice Reed in his opinion states pertinent language at page 534:

"The basis for the deportation of presently undesirable aliens resident in the United States is not questioned and requires no reexamination. * * * So long, however, as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the plenary power of Congress to expel them under the the sovereign right to determine what non-citizens shall be permitted to remain within our borders.

[fol. 14f] Changes in world politics and in our internal economy bring legislative adjustments affecting the rights of various classes of aliens to admission and deportation. The passage of the Internal Security Act of 1950 marked such a change of attitude toward alien members of the Communist Party of the United States. Theretofore there was a provision for the deportation of alien anarchists and other aliens, who are or were members of organizations devoted to the overthrow by force and violence of the Government of the United States, but the Internal Security Act made *Communist membership alone of aliens a sufficient ground for deportation.* (Emphasis added.)

* * * The bar against the admission of Communists cannot be differentiated as a matter of power from that against anarchists upheld unanimously half a century ago in the exclusion of Turner."

The Supreme Court has considered the problem in

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Harisiades v. *Shaughnessy*, 342 U.S. 580, and of great interest is the statement of Mr. Justice Jackson at page 593, in which he states:

"In 1939, this Court decided *Kessler* v. *Strecker*, 307 U. S. 22, in which it was held that Congress, in the statute as it then stood, had not clearly expressed an intent that Communist Party membership remained cause for deporta-[fol. 14g] tion after it ceased. The Court concluded that in the absence of such expression only *con*temporaneous membership would authorize deportation.

The reaction of the Communist Party was to drop aliens from membership, at least in form, in order to immunize them from the consequences of their party membership.

The reaction of Congress was that the Court had misunderstood its legislation. In the Act here before us it supplied unmistakable language that past violators of its prohibitions continued to be deportable in spite of resignation or expulsion from the party. It regarded the fact that an alien defied our laws to join the Communist Party as an indication that he had developed little comprehension of the principles or practice of representative government or else was unwilling to abide by them."

The argument of petitioner's counsel can well be answered by the Circuit Court in the Shaughnessy case reported in 187 F. 2d 137. The Court states at page 141:

"* * * He argues that his joining was permissible political activity because he was not found to have *personally* advocated overthrow of the Government by force. A sufficient answer is that there is nothing in the Constitution which imposes upon deportation officials the difficult and uncer-[fol. 14h] tain task of distinguishing between those members of a subversive group who individually advocate the forbidden course and those who do not. * * * Nor is it a valid objection that the ground of deportation is an act that occurred before the statute was adopted." (Emphasis added).

Hardship

No doubt petitioner's counsel will raise the problem of hardship in this case, since by law the petitioner being

deportable as a member of the Communist Party is statutorily ineligible for suspension of deportation. Of interest in this respect is the language of Mr. Justice Jackson in the Harisiades case, supra, wherein he states at pages 590 and 591:

"We are urged, because the policy inflicted severe and undoubted hardship on affected individuals, to find a restraint in the Due Process Clause. But the Due Process Clause does not shield the citizen from conscription and the consequent calamity of being separated from family friends, home and business while he is transported to foreign lands to stem the tide of Communism. If Communists aggression creates such hardships for loyal citizens, it is hard to find justification for holding that the Constitution requires that its hardships must be spared the Communist alien. When citizens raised the Constitution as a shield [fol. 14i] against expulsion from their homes and places of business, the Court refused to find hardship a cause for judicial intervention."

Scope of the Inquiry

The question being tried by this hearing is the legality of the custody of the petitioner.

The inquiry of the Court upon writ proceedings in deportation cases is limited, as established by a long line of decisions. If the hearing in deportation proceedings is fair, if there is evidence to support the finding of the Attorney General, and if no error of law is committed, the ruling of the department must stand and cannot be corrected in judicial proceedings.

Kessler v. Stracker, 307 U.S. 22;
Bridges v. Wixon (9 Cir. 1944), 144 F. 2d 927;
Moncado v. Ramsey (8 Cir. 1948), 167 F. 2d 191;
Von Kleckowski v. Watkins, 71 Fed. Supp. 429 (D. C. N. Y. 1947).

Mr. Justice Douglas in the case of Eagles v. Samuels, 329 U. S. 304, at page 315, states it bluntly:

"The function of habeas corpus is not to correct a practice but only to ascertain whether the procedure complained of has resulted in an unlawful detention."

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Conclusion

To summarize then:

[fol. 14j] 1. Plaintiff is an alien who admits past membership in the Communist Party.

2. The law makes him deportable for this fact alone.

3. The hearing was fair and the petitioner was represented by counsel.

4. There is evidence to support the finding of deportability.

Wherefore, respondent prays that the petition for habeas corpus be denied and the order to show cause be discharged.

Respectfully submitted, Walter S. Binns, United States Attorney; Clyde C. Downing, Assistant United States Attorney, Chief, Civil Division; Robert K. Grean, Assistant United States Attorney, Attorneys for Respondent.

[fol. 14k] Exhibit B to Return to Order to Show Cause

United States of America

Department of Justice, Immigration and Naturalization Service

December 4, 1952.

Certification

By virtue of the authority vested in me by 8 C.F.R. 383.7, a regulation issued by the Commissioner of Immigration and Naturalization with the approval of the Attorney General pursuant to 5 U.S.C. 22 and 311, and 8 U.S.C. 102, 222, 458 and 727.

I hereby certify that the annexed documents are originals, or copies thereof, from the records of the said Immigration and Naturalization Service, Department of Justice, relating to Carlos Garcia-Alvarez, also known as Carlos Alvarez Garcia, File No. A3 852 720, of which the Attorney General is the legal custodian.

In witness whereof I have hereunto set my hand and caused the seal of the Department of Justice, Immigration

and Naturalization Service, to be affixed, on the day and year first above written.

H. R. Landon, District Director, Immigration and Naturalization Service. (Seal.)

[fol. 141] UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE
Los Angeles, California

Warrant—Deportation of Alien

No. A3 852 720

To District Enforcement Officer, Los Angeles, California, or to any Officer or Employee of the United States Immigration and Naturalization Service:

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien Carlos Alvarez Garcia who entered the United States at San Ysidro, Calif. on the 15th day of May, 1949 is subject to deportation under the following provisions of the laws of the United States to wit:

The Act of October 16, 1918, as amended, in that he has been, prior to entry, a member of the following class, set forth in Section 1 of said Act:

An Alien who was a member of the communist party of the United States.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien to Mexico, at the expenses of the Appropriation, "Salaries and Expenses Immigration Naturalization Service, 1953," including the expenses of an attendant if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 29th day of Oct. 1952.

Albert Del Guercio, Acting District Director.

[fol. 14m] Port of ——.

Date: —— —, 19—.

Warrant for Deportation of —— ——

Executed —— —, 19—. S. S. —— ——.

—— ——, (Signature of Officer), ——, (Title).

Note.—This warrant should be properly endorsed and returned to the Immigration and Naturalization Service, Washington, D. C., immediately after execution.

[fol. 14n] U. S. Department of Justice, Board of Immigration Appeals

Oct. 23, 1952.

File No. (Illegible)

In the Matter of Carlos Garcia-Alvarez aka Carlos Alvarez-Garcia

In Deportation Proceedings

In behalf of respondent: Harry Wolpin, Esquire, 1809 Canyon Dr., Los Angeles, 28 California.

Upon consideration of the entire record, it is ordered that the appeal from the decision of the Hearing Officer be and the same is hereby dismissed.

(Illegible.)

—— ——, Chairman.

[fol. 14o] UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE

Aug. 20, 1952.

File A3 852 720

In re: Carlos Garcia-Alvarez aka Carlos Alvarez-Garcia.
In deportation proceedings.
In behalf of respondent: Harry Wolpin, Esq., 1809 Canyon Dr., Los Angeles 28, California.

Charges:

Warrant: Act of October 16, 1918 as amended—Before entry member of the Communist Party of the United States.
Lodged: None.
Application: None.
Detention status: Detained at San Pedro Detention Station.

Discussion: This record relates to a 48-year-old married male, a native and citizen of Mexico, who last entered the United States at the port of San Ysidro, California on May 15, 1949, at which time he was admitted upon presentation of a valid Resident Alien's Border-Crossing Identification Card. That entry has not been verified. The alien has stated that he was lawfully admitted to the United States for permanent residence at El Paso, Texas, on June 15, 1922. He has resided continuously in this country since that date, except for a visit in Tijuana, Mexico of about eight or ten hours immediately preceding his last entry.

The alien has testified that he became a member of the Workers Alliance of America about 1939 and thereafter remained a member until the end of 1940 or the beginning of 1941. During that membership he was a secretary of Local U-1034 of the Workers Alliance. It is noted that the Workers Alliance was designated a Communist organization by the Attorney General pursuant to Executive Order 9835.

Respondent has testified that shortly after he became a member of the Workers Alliance of America in 1939, he joined the Communist Party of the United States at Los Angeles, California. He remained a member of that Party continuously until about the end of 1940 or the beginning

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of 1941. During that membership he attended about eight or ten meetings of that Party. He has stated that he terminated his membership in the Communist Party of the United States by not attending any further meetings or functions of that Party after 1940 or 1941. In that regard it is noted that the respondent has testified that he is a subscriber to the Daily Peoples World and has been a subscriber since an acquaintance originally bought him a subscription. Respondent has testified that he was a member of the Communist Party of the United States and attended about eight or ten meetings of that Party during the two-year period of his membership. He has stated that while a member he was not issued a membership card or book; that he did not pay dues and that he held no office or official position in that Party. His statement that he was not issued a membership card or book and that he did not pay dues are not credible, because of his admission of membership and because of his admitted membership in the Workers Alliance.

[fol. 14p] However, even should those statements be given full credit they cannot be found to show that he was not a member of the Communist Party of the United States or that he was at best an involuntary member thereof. It is noted that his memory was almost a complete blank insofar as his testimony in the hearing or in prior statements contained in Exhibit 2 relate to his activities in the Party, to the meetings which he attended, to the exact duration of his membership and to the names of any friends or acquaintances who were members of the Party or who attended meetings of that Party with him. On the basis of his testimony, it is found that the respondent was a voluntary member of the Communist Party of the United States for approximately two years, about 1939 to the end of 1940. He is, therefore, subject to deportation under the Act of October 16, 1918 as amended on the charge stated in the warrant of arrest.

Respondent is married to a lawful resident alien and has ten children who are natives and citizens of the United States. He is employed as a boiler maker's helper by the Southern Pacific Company and earns between $120.00 and $140.00 every two weeks. He owns his home in Los Angeles free and clear, worth about $5,000. From his testimony it

appears that his deportation would result in a serious economic detriment to his lawfully resident alien spouse and several minor United States citizen children.

Respondent has been found to be subject to deportation on a ground specified in Section 19(d) of the Immigration Act of 1917 as amended. He is, therefore, ineligible for the relief afforded by Section 19 (c) of that Act. He has made no application for relief thereunder. He has specified Mexico as the country to which he desires to be deported in the event that such an order is issued.

Findings of Fact as to Deportability:

(1) That the respondent is an alien, a native and citizen of Mexico;

(2) That the respondent last entered the United States on May 15, 1949 at San Ysidro, California, being admitted as a lawfully resident alien in possession of a border-crossing identification card;

(3) That the respondent was lawfully admitted to the United States for permanent residence on or about June 15, 1922 at El Paso, Texas and has maintained continuous residence in this country thereafter;

(4) That the respondent voluntarily became a member of the Communist Party of the United States at Los Angeles, California about or during 1939 and maintained that membership continuously for a period of approximately two years thereafter.

[fol. 14q] Conclusion of Law as to Deportability:

(1) That under Section 19 of the Immigration Act of 1917 and Sections 1 and 4 of the Act of October 16, 1918 as amended, the respondent is subject to deportation on the ground that he has been prior to entry a member of the following class set forth in Section 1 of said Act of October 16, 1918: An alien who was a member of the Communist Party of the United States.

Order: It is ordered that the respondent be deported from the United States pursuant to law on the charge stated in the warrant of arrest.

Wade H. Westmoreland, Hearing Officer.

WHW-kb.

[fol. 14r] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service Los Angeles, California

Hearing in Deportation Proceedings in the Case of Carlos Garcia-Alvarez aka Carlos Alvarez-Garcia

File A3 852 720

Place of Hearing: Office of the United States Immigration and Naturalization Service, 458 S. Spring Street, Los Angeles, 13, California.

Date of Hearing: August 18, 1952

Persons Present: Wade H. Westmoreland, Hearing Officer; Richard Lay, Examining Officer; Maria Ramirez, Official Spanish Interpreter; Katherine Blum, Stenographer; Harry Wolpin, Attorney at Law, 1809 Canyon Drive, Hollywood, 28, California, Counsel for the respondent; Carlos Garcia-Alvarez, Respondent.

By Hearing Officer to the Respondent Through the Interpreter:

Q. Do you speak and understand the English language?
A. Very little.

By Hearing Officer: The hearing will be conducted in the Spanish language, through the interpreter.

To the Respondent:

Q. What is your name?
A. Carlos Alvarez-Garcia.
Q. Are you willing to testify under oath in these proceedings?
A. Yes, sir.
Q. Will you stand and be sworn. Do you solemnly swear that your testimony in these proceedings will be the truth, the whole truth and nothing but the truth, so help you God?
A. Yes.

By Hearing Officer: Be seated, please.

Q. I offer for your inspection and that of counsel an original warrant No. A3 852 720 issued for the arrest of

Carlos Garcia-Alvarez, also known as Carlos Alvarez-Garcia, by the District Director United States Immigration and Naturalization Service, Los Angeles, California. This warrant is dated August 12, 1952, and is endorsed to show service on the person named at Los Angeles, California on August 13, 1952. Was this warrant served on you as indicated?

By Counsel: I will stipulate that this warrant was served on the alien as indicated.

By Hearing Officer: A copy of this warrant will be entered in the record and marked Exhibit 1.

A3 852 720 8-18-52

[fol. 14s] Hearing Officer to Respondent:

Q. This warrant charges that you are in the United States in violation of law, because you entered this country at San Ysidro, California on May 15, 1949, and prior to that entry you had been a member of the Communist Party of the United States in violation of the Act of October 16, 1918 as amended. Do you understand the nature of this charge?

A. —.

By Hearing Officer: Let the record show that the respondent hesitates to answer, and I will ask counsel if he will stipulate the charge in the warrant is understood.

By Counsel: Well, I cannot stipulate that the alien understands the charge as contained in the warrant, however——

By Hearing Officer: However, counsel, I believe, understands it.

By Counsel: Pardon me; however, the point that the respondent is making is that on that particular date he was not a member of the Communist Party; I understand the charge stated in the warrant of arrest.

Hearing Officer to Counsel:

Q. Does counsel desire further explanation of this charge to the respondent?

A. May I explain it to him in his native tongue, and I think that I can convey the information to him.

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By Hearing Officer: That is satisfactory and will be done off-the-record.
By Respondent: Yes.

Hearing Officer to the Respondent:

Q. The purpose of these proceedings is to determine your right to be and remain in the United States; do you understand?
A. Yes, sir.
Q. Is Mr. Wolpin representing you in these proceedings?
A. Yes, sir.

Hearing Officer to Counsel:

Q. Mr. Wolpin, are you ready to proceed with the hearing in this matter?
A. I am ready to proceed.

Hearing Officer to Examining Officer:

Q. Mr. Lay, are you ready to present the Government's case?
A. Yes.
[fol. 14t] By Hearing Officer: Will you please do so.

By the Examining Officer to the Respondent:

Q. Are you the same Carlos Alvarez-Garcia who appeared before an officer of this Service at this office on June 19, 1952 and made a sworn statement concerning your immigration status in the United States?
A. Yes, sir.
Q. At this time I show to you and your counsel the original copy of the transcript of statement identified as a statement of the person by that name given on that date at this office, consisting of typewritten pages 1 to 7 inclusive, and ask you if that is your signature which appears as Carlos A. Garcia, respondent, on page 7 of that transcript?
A. Yes, sir.

By Examining Officer to the Hearing Officer: I desire at this time to offer the transcript of statement just identi-

fied by the respondent for introduction into the evidence of this proceeding.

By Counsel: No objection.

By Hearing Officer: The transcript of sworn statement is entered in evidence and marked Exhibit 2.

By Examining Officer to the Respondent:

Q. In Exhibit No. 2 you stated that at the time of your last entry into the United States you had in your possession and presented a resident alien's border-crossing identification card, by which means you gained entry into the United States. At this time I show you a resident alien's border-crossing identification card, No. 172054, issued in the name of Carlos Garcia-Alvarez, and ask you if that card pertains to you?

A. Yes, sir.

Q. And is that the card you presented at the time of your last admission into the United States on May 15, 1949?

By Counsel: I will stipulate, to save time, that this is the border-crossing card he presented on May 15, 1949 upon entering the United States at San Ysidro, California.

Counsel to Examining Officer:

Q. Is that satisfactory, counsel?

A. Yes.

By Counsel: I will stipulate that it may be introduced in evidence as the Government's next exhibit.

By Examining Officer: It is so offered.

[fol. 14u] By Hearing Officer: It is so received and marked Exhibit No. 3.

By Examining Officer to the Respondent:

Q. Approximately how many times have you been absent from the United States for any period of time whatsoever, between your first entry in 1922 and your last entry on May 15, 1949?

A. Only once, and that was on May 15, 1949 to go and see the bull fights in Tijuana.

Q. Is that the only time that you have gone to Mexico for any period of time whatsoever since your first entry?

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A. Yes, sir.

Q. Have you ever been absent from the United States to any other country than Mexico?

A. No, sir.

Q. How long were you absent from the United States on that occasion?

A. About eight or ten hours.

Q. And when you returned to the United States on May 15, 1949 were you returning here to your home to live or reside permanently?

A. Yes, sir.

Q. In Exhibit No. 2 you stated that you were married. What is the name of your wife?

A. Carmen Garcia-Rangel.

Q. Do you know where she was born?

A. In Mexico.

Q. Of what country is she presently a citizen?

A. Mexico.

Q. Do you know whether she has taken any steps towards becoming a citizen of any country other than Mexico?

A. No, sir.

Q. You mean you don't know or she hasn't?

A. I don't know, sir.

Q. Do you know how long she has resided in the United States.

A. I don't know exactly, sir.

Q. Since your marriage to her, do you know whether she has ever been absent from the United States for any period of time whatsoever?

A. No, sir, she hasn't been absent.

[fols. 14v-w] Q. When were you married?

A. June 12, 1927.

Q. Where were you married?

A. Here in Los Angeles, California.

Q. Are all of your children, which you mentioned, you have ten I believe, in Exhibit No. 2, are all of them United States citizens?

A. Yes, sir, they were all born here.

Q. How many of them are married?

A. One girl.

Q. In Exhibit No. 2 you stated that a Mr. Taylor bought your first subscription to the "Peoples World" and

that you have been renewing it through him since. When did you receive this first subscription to the "Peoples World"?

A. I don't recall exactly, but the year I think it was 1951.

Q. You remember Mr. Taylor's first name this time?

A. No, I only know him by his last name, Mr. Taylor.

Q. Do you know whether his name is William Taylor?

A. I don't know.

Q. Do you know where he lives?

A. No, sir.

Q. Do you know whether he lives on E. 2nd Street, in Los Angeles?

A. I don't know, sir.

Q. You have stated in Exhibit No. 2 that you were a member of the Communist Party in Los Angeles for approximately two years. Did this Mr. Taylor attend meetings of the Communist Party with you?

A. I met him at the Workers' Alliance.

Q. Did he attend meetings of the Communist Party with you?

A. No, sir.

Q. Did he attend meetings of the Workers Alliance with you?

A. He didn't belong to that Local.

Q. Do you know whether he belonged to some other Local of the Workers Alliance or not?

A. Yes, sir, he belonged to another Local.

Q. How do you know this?

A. Because when we would have a complaint from our Local we would bring it here to the town and then we would meet him here.

[fol. 14x] Q. Do you know why Mr. Taylor bought a subscription to the "People's World" for you?

A. Once I lent him some money, about $3.00, and he never paid me. So I guess he wanted to pay me that way.

Q. Did you ever attend meetings of any club or organization at which this Mr. Taylor was present?

A. No, sir.

Q. Who was the person that told you that the Smiley Rincon Club was a Branch of the Communist Party?

A. —.

By Counsel: I am going to object to that statement as calling for a fact not in evidence; I mean, does he state in the statement that the Smiley Rincon Club is a branch of the Communist Party?

By Examining Officer: He states that some person told him that Club was a Branch of the Communist Party. It is contained in Exhibit 2.

By Counsel: I think that you should ask "did some people tell you that".

By Examining Officer: It is a matter of record, he stated that someone did tell him that.

By Counsel: May I see that statement (Examines transcript of statement) I withdraw the objection.

(At this point respondent is answering in Spanish language, and interpreter is clarifying the answer in Spanish.)

By Counsel: Let me put it this way; the respondent states he doesn't know whether or not the Smiley Rincon Club was a branch of the Communist Party, and he doesn't remember who told him anything like that.

By Hearing Officer: I will ask the interpreter to translate the respondent's answer to the question as given by him.

By Respondent (through interpreter): I don't remember the name.

Examining Officer to Respondent:

Q. Do you remember whether or not it was Mr. Taylor?

A. No, sir.

Q. Do you know or are you acquainted with a person named Lillian Chernin Doran?

A. No, sir.

Q. Are you acquainted with a person named Cosmo V. Lopez?

A. No, sir.

[fol. 14y] Q. Are you acquainted with a person named Jesus L. Cruz, 433 North Alma Street, Los Angeles?

A. No, sir.

Q. Are you acquainted with a Florencio Moisa who lives or lived at 3114 South Hobart Boulevard, Los Angeles?

A. No, sir.

Q. How about an Italia Moisa, do you know her, or are you acquainted with her?

A. I used to see her at the Workers Alliance.

Q. Did she attend meetings of the same Local of the Workers Alliance that you attended?

A. No, sir.

Q. Where did you see her at meetings of the Workers Alliance then?

By Counsel: I am going to object to that, I don't think he said he saw her at meetings of the Workers Alliance, he said I used to see her at the Workers Alliance.

By Examining Officer: I will correct the question; it makes no difference.

To Respondent:

Q. Where did you see her in any connection with the Workers Alliance?

A. When we used to bring the complaints to the center of the town here of the Workers Alliance.

Q. Did you ever attend any meetings of any clubs, societies or organizations of any kind with any of these people I have just named to you, to you- knowledge?

A. No, sir.

Q. Did you ever work with any of these people to solicit aid from Spanish-speaking people here in Los Angeles for any organization?

A. No, sir.

Q. Do you have any knowledge of whether any of these people I have just named to you are members of the Communist Party?

A. I don't know.

Q. Do you know whether any of these people are members of the Smiley Rincon Club?

A. No sir.

Q. With those names to refresh your memory can you state whether it was any of these people who told you the Smiley Rincon Club was a branch of the Communist Party.

A. It wasn't any one you mentioned.

[fol. 14z] Q. Are you now a member of the Smiley Rincon Club?

A. No, sir.

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Q. Is it true that as of one year ago today you were a member of the Smiley Rincon Club?

A. No, sir.

Q. Are you now a member of the American Mexican National Association?

A. No, sir.

Q. Have you ever been a member of that organization?

A. No, sir.

Q. Have you heard of that organization here in Los Angeles?

A. Yes, sir.

Q. Did you ever taken an active part in soliciting members for this organization?

A. No, sir.

Q. Are you still living at 674 Antonia Street, Los Angeles?

A. Yes, sir.

Q. How long have you lived there?

A. It must have been 1947 or '48.

Q. Is that a single dwelling or an apartment house or what type of dwelling is it?

A. It is just a single dwelling.

Q. Do you own it or rent?

A. I own it.

Q. Did you buy it in 1947 or 1948?

A. Yes, sir.

A. Yes, sir.

Q. Since 1947 or 1948 when you bought this property, has there been any other Carlos Garcia living in this property to your knowledge?

A. Only me.

Q. If I told you that this office has information that a Carlos Garcia living at 674 Antonia Street, Los Angeles, California, was a member of the Smiley Rincon Club of the Communist Party as of one year ago today, what would you say?

A. That he was not a member.

By Counsel: May I make a statement for the record. I don't believe this man should be held responsible for the statements of any other persons or person, or for any record of any so-called society that might have put his name

down without his consent or permission. If the Examining Officer can produce an application for membership with his name on it or any document bearing his signature, I have no objection to introducing it into evidence, but as I see [fol. 14aa] it this is nothing more than a witch hunt based probably on statements of other persons who have no knowledge of the facts and this man has a wife and ten American-born children, he has enough to do to support them let alone organize other clubs or go looking for members of clubs, his duties at home are enough to keep him busy, in addition to working for a railroad eight and ten hours a day for the past years.

By Hearing Officer: I would like the record to show in response to counsel's statement that only evidence in the record and not inferences drawn from any questions put to respondent will be used as a basis for a decision in this case.

By Counsel: Thank you.

Examining Officer to the Respondent:

Q. Are you now a member of the Workers Alliance of America?

A. The Workers Alliance was over, was finished when there was no more unemployment, when everybody started having work.

Q. Do you know when this organization terminated?

A. When I started working I quit going to the Workers Alliance so I don't know when it was terminated.

Q. When did you quit going?

A. In 1940 I got work in construction outside and then in 1942 I started working for the railroad.

Q. Then did you quit going to the Workers Alliance in 1940, is that what you mean?

A. I stopped going to the Workers Alliance when I got work. I think approximately it must have been at the end of 1940 or the beginning of 1941.

Q. And when did you join this organization or start attending meetings?

A. In 1939.

Q. Then your membership therein was approximately two years, is that right?

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A. Not exactly, but more or less.

Q. Was your membership in the Communist Party of the United States during approximately the same period of time?

A. More or less, just a little after I joined the Workers Alliance, I don't know exactly the date.

Q. Approximately how many meetings of the Communist Party did you attend during this approximate two-year period?

A. Exactly I wouldn't know, but several.

[fol. 14bb] I believe in Exhibit No. 2 you stated that they met approximately once a month. Would you say the number of meetings that you attended would be approximately twenty-four meetings?

A. No, I didn't go every time: I couldn't always go.

Q. Could you say that you attended approximately fifteen meetings?

A. I couldn't say exactly because I don't remember.

Q. If you can't say exactly, can you give an approximation of how many?

A. Maybe eight or ten, but I don't know exactly.

Q. Have you registered under the Alien Registration Act of 1940?

A. Yes, sir.

Q. Do you remember when you registered?

A. The exact date no, but when they started registering.

Q. Did you register under your true name as you have given it here today?

A. Yes, sir.

Q. At this time I show you Form AR-2, Alien Registration Form, bearing number 3 852 720, and the signature of the registrant appearing thereon appears to be Carlos Alvarez-Garcia, stamped to show registration on October 9, 1940 at the Terminal Annex, Los Angeles, California, and ask you if that is your signature appearing on this form as the signature of the registrant?

A. Yes, sir.

Q. It is noted that under Section or Part 10, of this form, it reads: "I am or have been within the past five years or intend to be engaged in the following activities; in addition to other information list membership or activities in clubs, organizations or societies." There is typed in "I am a

member of the Workers Alliance of America, secretary of Local U-1034." Did you refer there to the local unit of the Workers Alliance of America to which you belonged, that is Unit 1034, is that what you mean there?

A. Yes, sir.

Q. Then you were a member of this organization as shown here on October 29, 1940 when you registered under the Alien Registration Act of 1940, is that correct?

A. —.

By Counsel: I will stipulate that he was a member of that unit on that date.

Examining Officer to Respondent:

Q. Were you also a member of the Communist Party of the United States at that time?

A. Yes.

[fol. 14cc] Q. Why did you not list your membership in the Communist Party of the United States in this section of the registration form which asked for membership in clubs, organizations and societies?

By Counsel: For the purpose of the record I would like to state that the Communist Party in October of 1940 was not regarded in the same light as it is regarded today with the war in Korea going on, and it was no crime in 1940 to be a member of the Communist Party of the United States. It was not one of the proscribed parties, conditions were different than they are today. In October of 1940 Russia was fighting Germany, which was our common enemy, and I don't think that his membership in the Communist Party of the United States in 1940, if he regarded himself as a member at that time, was of such moment then as the United States considers it now; it is only in very recent years and since this outbreak, you might say, this outbreak in Korea that things against the Communist Party have been regarded in this manner, and an organization perfectly harmless in 1939 and 1940, membership in such an organization should not be regarded in the Communist party in 1952 or for that matter 1950 or '51.

By Hearing Officer: I believe counsel's comments might have better been put in a brief; however, I will permit

then to show in the record, and I believe the respondent has replied to the question.

By Respondent: Yes, sir, I guess so.

By Examining Officer: The answer is not responsive; the question is why did you fail to list membership in the Communist Party under this section or Part 10 of this registration form which asks for membership in clubs, organizations or societies.

By Respondent: Maybe just didn't think of it.

Q. Well is that the reason?

A. Yes, sir.

Examining Officer to Hearing Officer: I desire at this time to offer this alien registration form identified by the respondent for introduction into the evidence in these proceedings with permission to substitute at a later date certified photostatic copy of the same.

By Counsel: No objection.

By Hearing Officer: The original document at this time is entered in evidence and marked *Exhibit 4*, and may be substituted at a later date for a photostatic copy.

By Examining Officer to the Respondent:

Q. To your knowledge, did your wife ever belong to any clubs, societies or organizations in the United States or any other country?

A. No, sir, she never belonged to any organization at all. [fol. 14dd] Was she ever a member of the Workers Alliance of America during the time that you were a member or any other time?

A. She has never belonged to any organization whatsoever; she has only worked in her home.

Q. Was she ever a member of the Communist Party in the United States to your knowledge?

A. No, she never has.

Q. Can you tell me the date that you discontinued your membership in the Communist Party of the United States?

A. When I left the Workers Alliance, I left everything and I dedicated myself to my work.

Q. Can you tell me in what manner you terminated your membership in the Communist Party, that is, did you resign,

enter a resignation, or just quit going or how did you terminate it?

A. I just quit going.

Q. Since this termination of your membership, which apparently by the record here would be the latter part of 1940 or the early part of 1941, has anybody solicited you or asked you to rejoin the Communist Party?

A. No, sir, nobody has asked me.

Q. Is it your statement here today that you have not been a member of the Communist Party or organization affiliated with the Communist Party of the United States since the end of 1940 or the beginning of 1941?

A. Yes, sir, I left everything, and quit going to everything since I started working.

Q. Could you at this time name any of the persons who were members of the Communist Party at the time you were or that you attended meetings with?

A. No, I couldn't because sometimes I only knew their first names or other times just their last names.

Q. In the event that information is furnished you that might refresh your memory or that you do recall these persons, are you willing to testify in behalf of the Government in any proceedings that might be instituted because of membership that you could testify to?

A. If I would remember, or if I knew them, certainly, why not.

Q. Are you in sympathy with the doctrines of the Communist Party at the present time?

A. No, sir.

Q. Having been a member of the Communist Party and now stating that you are not in sympathy with them, can you state for what reason your attitude has changed?

A. The only thing I can say is that I just dedicated myself to my work and to support my family and I don't intend to belong to any organization whatsoever.

[fol. 14ee] Have you ever been indicted for any offense either in the United States or any other country?

A. No, sir.

Q. Have you ever been arrested by the police or similar authorities either in the United States or any other country?

A. Not that I remember.

Q. Have you ever registered under the Selective Service Laws of the United States on any occasion?

A. Yes, sir.

Q. Do you remember when and where you registered?

A. I don't remember, but when they started registering, I registered here on Soto and Sichel Streets, I think it was the Roosevelt School in Los Angeles, California.

Q. Did you ever serve in the Armed Forces of the United States or any other country?

A. No, sir.

Q. Did you ever claim exemption from military service in the United States because you were an alien residing here or any other reason?

A. No, sir, I never claimed anything like that; I told them I was ready whenever they would call me.

Q. Are you employed at the present time?

A. Yes, sir.

Q. What is the name and address of your employer?

A. I work for the Southern Pacific Company, at 1800 Alhambra Street, Los Angeles, California.

Q. What kind of work do you do?

A. Boilermaker's helper.

Q. How long have you been employed by this company?

A. It will be ten years this next October.

Q. What is your average weekly income from your employment?

A. We are paid every two weeks, and I get—it all depends—from $120.00 to $140.00, depending on the hours and the days that I work.

Q. Do you have any other source of income?

A. No, sir.

Q. What is the approximate value of the home you stated you own?

A. Approximately $5,000.

Q. Do you owe anything on it?

A. No, sir.

[fol. 14ff] Q. Do you own any other property or assets?

A. I don't own another property but I have my furniture.

Q. About what value?

A. Approximately $200.00, but I am not sure.

By Examining Officer: I have no further questions of the respondent.

Hearing Officer to Counsel:

Q. Mr. Wolpin, do you desire to question the respondent?
A. Yes.

Counsel to Respondent:

Q. Mr. Garcia, did you ever go to school?
A. In Mexico, yes.
Q. For how many years did you go to school?
A. About three years.
Q. Was that all the schooling you had?
A. Yes, sir.
Q. I call your attention to the fact that I believe you testified that you were not working in the year 1939, is that a fact?
A. Yes, sir.
Q. Was there any reason why you went to the Workers Alliance meetings or to the place where they held their meetings in 1939?
A. Yes, sir. My children needed some shoes and they told me where I could get them would be at the Workers Alliance, and they would help me, so that is why I went there.
Q. Did the Workers Alliance give you shoes?
A. No, not then, but they would fight for us so that we would get what we need with the SRA.
Q. Who is the SRA?
A. That was the help that the State or the Government would give.
Q. Did the Workers Alliance help you to get shoes or food?
A. Yes, sir.
Q. It was your poverty that drove you to the Workers Alliance was it not?
A. Yes, sir.
Q. Did you own any property of any kind in the year 1939?
A. No, sir.
Q. How many children did you have in the year 1939?
A. Six or seven, I don't remember.

[fol 14gg] Q. How old were these children in 1939 when you went to get food and clothing for them through the assistance of the Workers Alliance?

A. They were still young children, I don't remember the exact ages, but I think the oldest must have been about fourteen years old.

Q. Were any of these children working at the time?

A. No, sir.

Q. Did you have any means of supporting your wife and six children in 1939?

A. In 1938 I was working for the Thompson Boiler Works, but in 1939 I didn't have anything, so that is why I went to the Workers Alliance for help.

By Counsel: Nothing further from the respondent at this time.

By Hearing Officer to Counsel:

Q. Mr. Wolpin, do you have any evidence to offer or witnesses to be called?

A. Well, of course, I do wish to call the attention of the Hearing Officer and the Examining Officer the fact that this man has ten American citizen children nine of whom are solely dependent upon him for support and a wife who is a legally resident alien. That's all.

Hearing Officer to Examining Officer:

Q. Mr. Lay, does the Government have further evidence or witnesses to be called?

A. Nothing further.

Q. Will you state for the record the present condition of detention or release of the respondent?

A. The respondent is at present being detained under the warrant of arrest as stated in exhibit in these proceedings.

To the Respondent:

Q. If you are found to be subject to deportation and ordered deported, what country do you wish to specify as the country to which you shall be deported?

By Counsel: Mexico would be the country. There is no other country that would accept him.

To Counsel:

Mr. Wo[illegible]n. as soon as possible, I will prepare a written decision in this case and you will be furnished with a copy of that decision together with information as to the manner in which you may submit exceptions thereto if you so desire. The Hearing is closed.

Hearing closed.

I certify that the foregoing is a true and correct transcript of my stenographic notes and of the dictaphone recording taken in this hearing (Book 2343).

Katherine Blum, Stenographer.

[fol. 14hh] I certify that, to the best of my knowledge and belief, the foregoing record is a true report of everything that was stated during the course of the hearing, including oaths administered, the warnings given to the alien or the witnesses, and the rulings on objections, except statements made off the record.

Wade H. Westmoreland, Hearing Officer.

[fol. 14ii] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service, Los Angeles 13, California

Los Angeles District File No. A3-852-720

June 19, 1952, 10:30 A.M.

Sworn Statement of Carlos Alvarez Garcia made before Investigator Austin E. Moe, at Los Angeles, California, in the Office of the Immigration and Naturalization Service, 458 South Spring Street, Los Angeles, on June 19, 1952. Statement taken in the Spanish language.

Present: Austin E. Moe, Examining Officer; Truman L. LeFors, Witness and Acting Interpreter; Carlos Alvarez Garcia, Respondent; Goldie B. Epstein, Stenographer.

Examining Officer to Respondent Through Interpreter:

Q. You are advised that I am an Investigator and Acting Immigrant Inspector of the United States Immigration and

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Naturalization Service and as such I am empowered to take testimony under oath in connection with the enforcement of the immigration and naturalization laws. In this connection it is my desire at this time to take such a statement from you under oath. You are advised that any statement you make should be voluntary and you are warned that anything you say may be used by the Government at any time in any future proceedings. Do you understand?

A. Yes.

Q. Are you willing to make such a statement here at this time?

A. Yes.

Q. Will you stand and be sworn? Do you solemnly swear the statements you will make here at this time will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. You are warned that if you willfully and knowingly give false testimony at this proceeding, you may be prosecuted for perjury, the penalty for which if convicted may be imprisonment for not more than five years or a fine of not more than $2,000.00 or both such fine and imprisonment. Do you understand?

A. Yes.

Q. What is your full, true and correct name?

A. Carlos Garcia-Alvarez.

Q. Have you ever used any other name or names?

A. No.

[fol. 14jj] Q. When and where were you born?

A. In Encarnacion de Valla, Jalisco, Mexico, November 4, 1903.

Q. Of what country are you a citizen?

A. Mexico.

Q. Have you ever been a citizen of any other country?

A. No.

Q. Are your parents living?

A. No.

Q. Did either of your parents ever live in the United States.

A. No.

Q. Of what country were your parents citizens?

A. Mexico.

Q. When and where did you enter the United States the first time?

A. June 15, 1922 at El Paso, Texas.

Q. In what manner were you admitted to the United States?

A. I immigrated for permanent residence.

Q. Have you been absent from the United States at any time since that entry in 1922?

A. No. Just one day trips to Tijuana.

Q. When did you last enter the United States?

A. May 15, 1949 at San Ysidro, California.

Q. How were you admitted to the United States at that time?

A. I presented a border crossing card.

Q. I now present for your inspection Resident Alien's Border Crossing Identification Card No. 172054 in your name and ask you if this is the document you had in your possession when you last entered the United States on May 15, 1949?

A. Yes.

Q. Since your first entry into the United States in 1922, have you made any other entries without immigration documents in your possession?

A. No.

Q. Have you been a resident of the United States continuously since your entry in 1922?

A. Yes.

Q. What is your marital status?

A. Married.

[fol. 14kk] Q. Do you have any children?

A. Yes.

Q. How many?

A. Ten.

Q. Were all of your children born in the United States?

A. Yes.

Q. Are you at the present time a member of the Communist Party of the United States?

A. No.

Q. Have you in the past been a member of the Communist Party of the United States?

A. Yes.

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Q. During what period of time were you a member of the Communist Party of the United States?

A. I was in 1939 up to 1940, for two years.

Q. Where were you a member of the Communist Party of the United States?

A. Los Angeles.

Q. Of what unit or sub-division of the Communist Party were you a member?

A. I don't remember the name of the group.

Q. Where did this group of the Communist Party hold its meetings?

A. At times they met in the same hall where Workers Alliance meetings were held.

Q. Can you remember approximately the address or the location of this hall?

A. It was a hall between Gless and Clarence on 4th Street.

Q. Did you regularly attend meetings of the Communist Party at that location?

A. They didn't meet very much there. The Workers Alliance also met there and the Party met there also.

Q. Where else did this unit of the Communist Party hold its meetings?

A. No other places.

Q. Did you hold any office or any official position in this unit of the Communist Party of the United States?

A. No.

Q. Did you have issued to you a membership card or membership book of the Communist Party of the United States?

A. No.

Q. Did you pay dues to the Communist Party of the United States during that time?

A. No, we didn't pay dues.

Q. Who recruited or asked you to join the Communist Party?

A. I don't remember.

[fol. 1411] Q. Do you remember filling out an application for membership in the Communist Party?

A. No.

Q. How many members of the Communist Party met with this group?

A. Sometimes 4 to 6 or 7. It varied.

Q. What were the names of the other members of this group of the Communist Party?

A. One was named Perez but he died already.

Q. Any others?

A. I don't remember any other names.

Q. Who was the chairman or appeared to be in charge of these meetings?

A. Mr. Perez was.

Q. Why did you drop out of the Communist Party?

A. I joined the Communist Party because they wanted me to and working conditions improved so I dropped out.

Q. Have you been a member of the Communist Party at any time since about 1940 when you stated you dropped out?

A. No.

Q. Were you also a member of the Workers Alliance at that time?

A. Yes.

Q. During what period of time did your membership extend in the Workers Alliance?

A. 1938 to 1940.

Q. Did you join the Workers Alliance before you joined the Communist Party.

A. I joined the Workers Alliance before I joined the Communist Party.

Q. Did the Workers Alliance and the Communist Party meet in the same place?

A. Yes.

Q. Did you attend the meetings of each organization?

A. I went there to meetings of the Communist Party and the Workers Alliance.

Q. How were you able to distinguish between the meetings of the Workers Alliance and the Communist Party?

A. The Alliance met on Friday every two weeks and the Communist Party met only once a month, on Tuesday or Wednesday, I don't remember which.

Q. How many members were there approximately in this branch or local of the Workers Alliance?

A. About 25.

Q. Did all of the members of the Workers Alliance in that group also belong to the Communist Party?

A. No.

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[fol. 14mm] Q. Did you understand that the Communist Party and the Workers Alliance were different organizations?

A. Yes.

Q. Did you drop out of both organizations about the same time?

A. Yes.

Q. You have stated that you had not paid dues to the Communist Party during your membership. Is that correct?

A. Yes, I didn't pay.

Q. Were you unemployed at the time of your membership in the Communist Party?

A. Yes, I was unemployed.

Q. Were you required to pay dues to the Communist Party inasmuch as you were unemployed?

A. I believe that those who were employed paid dues. I do not know.

Q. Did you pay dues to the Workers Alliance during that time?

A. We paid 35¢ a month.

Q. What usually transpired or happened at these meetings of the Communist Party?

A. They discussed workers' grievances before the officials of the WPA and SRA. The WPA had charge of the workers and the SRA administered direct relief.

Q. Did you ever attend any mass meetings or other meetings of the Communist Party?

A. No.

Q. This office has information to the effect that you were in 1947 a member of the Communist Party. What do you have to say to that information?

A. I was not a member at that time.

Q. Have you been a member of the Communist Party at any time since those two years of which you have spoken, about 1938 to 1940?

A. Those two years only.

Q. Have you attended any meetings of any kind of the Communist Party since that time?

A. No.

Q. Have you been a member of any organization since that time which was affiliated with the Communist Party?

A. No.

Q. Have you ever been a member of the Smiley Rincon Club?

A. No.

Q. Have you ever attended meetings of that organization?

A. No.

Q. Have you ever heard of the Smiley Rincon Club?

A. Yes, I have heard about it.

[fol. 14nn] Q. What do you know about this club?

A. One time a person named it to me as a branch of the Communist Party, but I have never been there.

Q. When was this club named to you as a branch of the Communist Party? In what year?

A. In 1938.

Q. Are you positive you have never attended meetings of the Smiley Rincon Club?

A. No.

Q. Have you ever contributed money to that organization?

A. No.

Q. What are the names and ages of your male children?

A. Manuel, 24 years. Mariano, 14 years. Jesus, 12 years. Carlos, 10 years. Roberto, 4 years. Raul, 3 years.

Q. What is your present address?

A. 674 Antonia Street, Los Angeles, California.

Q. You are advised that this office has reliable information that one Carlos Garcia of 674 Antonia Street was a subscriber to the Daily Peoples World in January 1950, February 1951 and May 1951. What comments do you have to make to that?

A. Yes, I have a subscription.

Q. You mean you are presently receiving that newspaper?

A. Yes. The week-end publication of the Daily Peoples World.

Q. Why do you subscribe to that publication?

A. At one time an acquaintance paid for a six-month subscription to the Peoples World for me, and I have been taking it since then for $2.00 a year.

Q. Who bought you this subscription originally?

A. A Mr. Taylor. I don't remember the first name.

Q. Why then do you continue to take this paper?

A. I don't read very much English but I can read the Spanish section and each year when Mr. Taylor comes back and asks me to renew my subscription, I take the week-end publication.

Q. During your membership in the Communist Party, did you ever use or have another name?

A. No, I used my true name.

Q. Are you or have you ever been a member of the American Mexican National Association?

A. No.

Q. Are you or have you ever been a member of any organization which you have not mentioned here today?

A. No.

[fol. 1400] Q. Is there anything else that you wish to state or add at this time?

A. No.

Q. Have you understood all the questions that have been asked you today?

A. Yes.

Q. Are you willing to sign this statement you have made after it has been transcribed and you have had an opportunity to read it?

A. Yes.

I hereby certify that the foregoing is a true and correct transcript of my stenographic notes, Book No. 2176.

Goldie B. Epstein, Stenographer.

I have read or have had read to me the foregoing transcript of testimony including pages 1 to 7, inclusive, and certify that my answers are true and correct to the best of my knowledge and belief.

(Signed) Carlos A. Garcia, Respondent.

Subscribed and sworn to before me at Los Angeles, California, this 13th day of August, 1952. (Signed) Austin E. Moe, Examining Officer.

[fol. 14pp] EXHIBIT 1

WARRANT FOR ARREST OF ALIEN

UNITED STATES OF AMERICA

Department of Justice, Los Angeles, Calif.

No. A 3 852 720

To District Enforcement Officer, Los Angeles, California
Or to any Immigrant Inspector in the service of the United States!

Whereas, from evidence submitted to me, it appears that the alien Carlos Garcia-Alvarez, aka Carlos Alvarez Garcia who entered this country at San Ysidro, California, on the 15th day of May, 1949, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

> The Act of October 16, 1918, as amended, in that he has been, prior to entry, a member of the following class set forth in Section 1 of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1953." The said alien may be released from custody pending determination of deportability under bond in the amount of $5,000.00.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 12th day of August, 1952.

H. R. Landon, District Director.

Port of Los Angeles, Calif.

Date August 13, 1952.

WARRANT FOR ARREST OF

Carlos Garcia-Alvarez

Served by me at Los Angeles, Calif., on August 13, 1952, at 10:30 a.m. Alien was then informed as to cause of arrest, the conditions of release as provided therein, advised as to right of counsel and furnished with a copy of this warrant.

Austin E. Moe.

[fol. 15] IN UNITED STATES DISTRICT COURT

TRAVERSE TO RETURN TO ORDER TO SHOW CAUSE—Filed December 8, 1952

Comes now the petitioner and traverses the return to the Order to Show Cause and alleges as follows:

I

That on the 19th day of June, 1952, your petitioner was in the office of the Immigration and Naturalization Service at Los Angeles, California, having been requested by letter to appear for an interview, at which interview your petitioner was not represented by counsel.

II

That prior to the recording of any testimony and prior to your petitioner being sworn, your petitioner was shown the alien registration card which he had signed in 1940 and asked if that was his signature. When your petitioner admitted that the signature was his your petitioner was asked if he ever belonged to or was affiliated with any other organization than that set forth on said Alien Registration Card, to wit, the Worker's Alliance of America. Upon petitioner's denial that he had ever been a member or affiiliated with any other organization, and particularly the Communist Party of America, or that he ever paid any dues or was a card holding member of that organization, [fol. 16] your petitioner was informed by the Hearing

Officer that by Executive Order No. 9835 the Worker's Alliance of America was declared to be an affiliate of the Communist Party of America and that therefore your petitioner's membership in the Worker's Alliance of America was the equivalent of being a member of the Communist Party of America, and when petitioner informed the Hearing Officer that he understood that point, your petitioner was then sworn, advised concerning the penalty of perjury and the hearing proceeded.

III

That your petitioner is not now and never has been a member of the Communist Party of America, has never been a dues paying member of any organization, including the Worker's Alliance of America, and has never carried a card of the Communist Party of the United States.

IV

That petitioner is now informed that Executive Order No. 9835 was not issued until 1947 and is wholly foreign to the question of affiliation of the Worker's Alliance of America with the Communist Party of the United States.

Wherefore your petitioner respectfully prays that this Honorable Court make an order commanding the District [fol. 17] Director of Immigration and Naturalization of District No. 16 at Los Angeles to produce the body of your petitioner in Court at a time and place to be set by this Court so that your petitioner may testify to the above facts, and so that there be not a travesty on justice perpetrated against your petitioner who has had thirty years of lawful residence in the United States, has married here and raised ten law abiding children, all born within the confines of the United States of America.

Harry Wolpin, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT

MINUTE ORDER DENYING PETITION, ETC.—
December 8, 1952

Proceedings:

For hearing on Order to Show Cause and Restraining Order, filed Dec. 1, 1952, directed to defendant to appear and show cause, if any he has, why a Writ of Habeas Corpus should not be granted.

Attorney Wolpin makes a statement and presents Traverse to Return to Order to Show Cause and same is filed herein. Attorney Wolpin makes a further statement on behalf of petitioner.

It Is Ordered that petition is denied and stay of execution is granted for a period of ten days; counsel for respondent to prepare and present findings and judgment.

Edmund L. Smith, Clerk, by Murray E. Wire, Deputy Clerk.

[fol. 19] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed
December 19, 1952

The above entitled matter came on regularly for hearing on an order to show cause why a writ of habeas corpus should not issue on December 8, 1952, in the above entitled Court, before the Honorable Ben Harrison, Judge presiding, the petitioner being represented by his attorney, Harry Wolpin, and the respondent by his attorneys, Walter S. Binns, United States Attorney, Clyde G. Downing and Robert K. Green, Assistants United States Attorney, appearing by Robert K. Green; and the Court having considered petitioner's petition, respondent's return to said petition, together with the certified copies of the transcripts of petitioner's statements under oath, both preliminary to the administrative hearing and in the administrative hearing, and the Court having received and considered petitioner's traverse to Respondent's return, and the Court, having read counsel's memoranda of points and authorities and having heard the oral argument of counsel

and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I

That on or about October 29, 1952, by authority of the [fol. 20] Attorney General, a warrant of deportation, directing the deportation to Mexico of the petitioner, Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez, was issued.

II

That the issuance of said warrant was based upon deportation proceedings in which hearing was given the alien petitioner on August 18, 1952.

III

That at the conclusion of said hearing, it was found that the petitioner was and is an alien, a native and citizen of Mexico; that he last entered the United States on May 15, 1949, at San Ysidro, California; that the petitioner voluntarily became a member of the Communist Party of the United States at Los Angeles, California, about or during 1939, and maintained that membership continuously for a period of approximately two years thereafter.

IV

That the warrant of deportation issued October 29, 1952 by authority of the Attorney General, directs that the alien be deported to Mexico, pursuant to the Act of October 16, 1918, as amended, in that he had been, prior to entry a member of the following class, set forth in Section 1 of [fol. 21] said Act: an alien who was a member of the Communist Party of the United States.

V

That the Immigration and Naturalization Service that conducted said hearing had jurisdiction to act.

VI

That the petitioner had notice of the hearing, was represented by counsel, and had opportunity to show that he did not come with the classification of aliens whose deportation Congress had directed.

VII

That there were no procedural irregularities in said hearing.

VIII

That said administrative hearing was fair.

IX

That there was substantial evidence to support the warrant of deportation.

Conclusions of Law

I

That the petitioner is deportable under 8 U.S.C. Sec. 137, as amended by the Internal Security Act of 1950, in that petitioner, after administrative hearing, was found to be [fol. 22] an alien who had been, prior to entry, a member of the Communist Party of the United States, and who, by warrant of deportation issued October 29, 1952, by authority of the Attorney General, was ordered deported to Mexico on said ground.

II

That the Immigration and Naturalization Service that conducted the hearing of August 18, 1952 had jurisdiction to act, that the hearing was fair, that none of petitioner's constitutional rights was abridged or violated, and that there is substantial evidence to support the order of deportation.

III

That the detention of petitioner by the respondent for purposes of deportation is lawful and proper, and the petition for writ of habeas corpus should be denied.

Dated: This 18 day of December, 1952.

Ben Harrison, United State District Judge.

Approved as to form pursuant
to Local Rule 7 (a) this day
of December, 1952.

[fol. 23] Acknowledgment of service (omitted in printing).

[File endorsement omitted.]

[fol. 24] In United States District Court

Judgment—December 18, 1952

The above entitled matter came on regularly for hearing on an order to show cause why a writ of habeas corpus should not issue on December 8, 1952, in the above entitled Court, before the Honorable Ben Harrison, Judge presiding, the petitioner being represented by his attorney, Harry Wolpin, and the respondent by his attorneys, Walter S. Binns, United States Attorney, Clyde C. Downing and Robert K. Green, Assistants United States Attorney, appearing by Robert K. Green; and the Court having considered petitioner's petition, respondent's return to said petition, together with the certified copies of the transcripts of petitioner's statements under oath, both preliminary to the administrative hearing and in the administrative hearing, and the Court having received and considered petitioner's traverse to respondent's return, and the Court having read counsel's memoranda of points and authorities and having heard the oral argument of counsel and being fully advised in the premises; and the Court having heretofore made and filed its Findings of Fact and Conclusions [fol. 25] of Law and having ordered that the petition for

writ of habeas corpus be denied; now, therefore, it is ordered, adjudged and decreed:

1. That the petition of Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez, for a writ of habeas corpus be, and the same is hereby denied;
2. That the order to show cause, issued herein on or about December 1, 1952, be, and the same is, hereby discharged; and
3. That the petitioner have a stay of execution from deportation for a period of ten days from December 8, 1952.

Dated: December 18, 1952.

Ben Harrison, United States District Judge.

Approved as to form pursuant to Local Rule 7(a) this — day of December, 1952.

Received copy of the within Judgment this 11th day of December, 1952.

Harry Wolpin, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 26] In United States District Court

Notice of Entry of Judgment—January 5, 1953

To the Petitioner above named and to his attorney, Harry Wolpin, please take notice:

Judgment in the above entitled case was entered in the records of the above entitled Court on December 29, 1952.

Dated: January 5, 1953.

Walter S. Binns, United States Attorney; Clyde C. Downing, Assist. U. S. Attorney, Chief Civil Division; Robert K. Grean, Asst. U. S. Attorney, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed December 18, 1952

To H. R. Landon, District Director Immigration and Naturalization Service Department of Justice District No. 16 and to Walter S. Binns, United States Attorney; Clyde C. Downing, Assistant United States Attorney and Robert K. Grean, Assistant U. S. Attorney:

Please take notice that the Plaintiff Carlos Alvarez Garcia, also known as Carlos Garcia Alvarez hereby appeals from the Order of the Hon. Ben Harrison, Judge of the United States District Court denying the plaintiff's petition for a Writ of Habeas Corpus.

Dated at Los Angeles, Calif. this 18th day of December, 1952.

Harry Wolpin, Attorney for Appellant.

[File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed January 9, 1953

To the Honorable Ben Harrison, Judge of the United States District Court and to Walter S. Binns, Clyde C. Downing and Robert K. Grean, Esqs., Attorneys for the District Director of Immigration & Naturalization Service, Department of Justice District No. 16 H. R. Landon:

You and each of you will please take notice that the petitioner Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment docketed on the 29th day of December, 1952 denying the petitioners application for a Writ of Habeas Corpus.

Dated at Los Angeles, California this 5th day of January, 1953.

Harry Wolpin, Attorney for the Petitioner and Appellant.

[File endorsement omitted.]

[fol. 29] IN UNITED STATES DISTRICT COURT

DESIGNATION OF DOCUMENTS AND EXHIBITS TO BE INCLUDED IN THE RECORD OF APPEAL—Filed January 23, 1953

The plaintiff and appellant Carlos Alvarez Garcia, also known as Carlos Garcia Alvarez, in pursuant to the provisions of Rule 75 of the Federal Rules of Civil Procedure, and Rule 11, Subdivision (1) of the Rules of the United States Court of Appeals of the Ninth Circuit hereby designates for inclusion in the record on appeal the complete record of all of the proceedings and evidence in this action, consisting of the following pleadings and documents as here in below set forth:

(1) Petition for Writ of Habeas Corpus.
(2) Brief of Points and Authorities in Support of Writ.
(3) Order to Show Cause.
[fol. 30] (4) Return to Order to Show Cause.
(5) Traverse to Return to Order to Show Cause.
(6) Minute Order of Court dated December 8, 1952.
(7) Findings of Fact and Conclusions of Law.
(8) Notice of Entry of Judgment.

Harry Wolpin, Attorney for Appellant.

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

COUNTER DESIGNATION OF DOCUMENTS AND EXHIBITS TO BE INCLUDED IN THE RECORD ON APPEAL—Filed January 28, 1953

Comes now the respondent H. R. Landon, District Director of the Immigration and Naturalization Service, and hereby designates the additional portions of the record to be included in the record on the appeal of petitioner above names from the judgment of the Court entered herein on December 29, 1952 in favor of the respondent against petitioner. The hereinafter designated items are in addition

to items (1) through (8) designated by the petitioner above named.

A. Respondent's Exhibit "B", consisting of the administrative file in the Immigration and Naturalization Service of the United States, pertaining to the petitioner and attached to respondent's Return to Order to Show Cause.

B. The Judgment of the Court dated December 18, 1952 docketed and entered December 29, 1952.

Dated January 28, 1953.

Walter S. Binns, U. S. Attorney; Clyde C. Downing, Asst. U. S. Attorney; Robert K. Grean, Asst. U. S. Attorney, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 32] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 33] In United States District Court

Statement of Points To Be Relied Upon—February 17, 1953

The points upon which appellant intends to rely on appeal are:

1. The Court erred in denying the petition for a writ of habeas corpus for the following reasons:

(a) That the Act of October 16, 1918, as amended (8 U. S. C. 173, as amended by the Internal Security Act of 1950; 8 U. S. C. 137 (2)(c); 8 U. S. C. 137-3(a)) is unconstitutional.

(b) That the evidence produced in the administrative hearing is insufficient to sustain the deportation charge.

(c) That the appellant was not given a fair and impartial hearing.

(d) That the administrative hearing before the Im-

migration Officials was not legally conducted and procedure required by law was not followed.

(e) That the Immigration Officials, at the administrative hearing, considered secret, confidential information and other evidence which was not disclosed to the appellant or his counsel, at arriving at their decision, thus rendering the hearing unfair.

Dated: February 17, 1953.

Harry Wolpin, Attorney for Appellant.

[fol. 34] IN UNITED STATES DISTRICT COURT

APPELLANT'S DESIGNATION OF RECORD MATERIAL TO CONSIDERATION OF THE APPEAL—February 17, 1953

Appellant hereby designates the following documents as all of the record which is material to the consideration of the appeal:

1. Petition for Writ of Habeas Corpus.
2. Brief of Points and Authorities in Support of Writ.
3. Order to Show Cause.
4. Return to Order to Show Cause.
5. Traverse to Return to Order to Show Cause.
6. Minute Order of Court dated December 8, 1952.
7. Notice of Appeal (First).
8. Findings of Fact and Conclusions of Law.
9. The Judgment of the Court dated December 18, 1952 as docketed and entered December 29, 1952.
10. Notice of Entry of Judgment.
11. Notice of Appeal (Second).
12. Designation of Documents and Exhibits to be included in the Record on Appeal.

Dated: February 17, 1953.

Harry Wolpin, Attorney for the Appellant.

[fol. 35] In United States Court of Appeals for the Ninth Circuit

Stipulation and Order Granting Motion to Prosecute Appeal on Typewritten Record and Briefs, etc.

It is hereby stipulated between the attorneys for the parties in the above-entitled action, subject to the approval of the Court, that appellant and appellee may proceed by way of a typewritten transcript and briefs and that the Court may consider the exhibits in their original form.

Dated: February 23rd, 1953.

(S.) Harry Wolpin, Attorney for Appellant. Walter S. Binns, U. S. Attorney; Clyde C. Downing, Asst. U. S. Attorney; (S.) Robert K. Grean, Asst. U. S. Attorney, Attorneys for Appellee.

So ordered: (S.) William Denman, Chief Judge; (S.) William Healy, Circuit Judge; (S.) Walter L. Pope, Circuit Judge.

(En-orsed:) Order, etc., filed March 2, 1953. Paul P. O'Brien, Clerk.

[fol. 36] In United States Court of Appeals for the Ninth Circuit

Order of Submission—July 28, 1953

(Omitted in printing)

[fols. 37-38] In United States Court of Appeals for the Ninth Circuit

Order Directing Filing of Opinion and Filing and Recording of Judgment—September 29, 1953

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[fol. 39] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13,705

CARLOS ALVAREZ GARCIA, also known as Carlos Garcia-Alvarez, Appellant,

vs.

H. R. LANDON, District Director of Immigration and Naturalization, Appellee

Appeal from the United States District Court for the Southern District of California, Central Division
Before Mathews, Healy and Orr, Circuit Judges

OPINION—September 29, 1953

MATHEWS, Circuit Judge:

Appellant, Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez, a Mexican alien, was lawfully admitted to the United States for permanent residence on June 15, 1922. Appellant has resided in the United States continuously since June 15, 1922, except for visits to Mexico between June 15, 1922, and May 15, 1949. After each such visit, appellant returned to and entered the United States. He last entered the United States on May 15, 1949.

On August 12, 1952, a warrant for appellant's arrest was issued by appellee, H. R. Landon, a district director of Immigration and Naturalization. That warrant stated, in substance, that, from evidence submitted to appellee, it appeared that appellant was deportable under the Act of [fol. 40] October 16, 1918, as amended,[1] because, prior to

[1] 1. As used in this opinion, the term "Act of October 16, 1918, as amended," means the Act of October 16, 1918, c. 186, 40 Stat. 1012, as amended by § 22 of the Internal Security Act of September 23, 1950, c. 1024, 64 Stat. 1006-1010, 8 U. S. C. A. §§ 137 to 137-8. The Act of October 16, 1918, as amended, was repealed by § 403(a) of the Immigration and Nationality Act of June 27, 1952, c. 477, 66 Stat. 279, effective December 24, 1952, but this case is not affected by the repeal. See § 405 (a) of the Immigration and Nationality Act, 66 Stat. 280.

May 15, 1949, he was a member of the Communist Party of the United States.[2] Under that warrant, appellant was arrested at Los Angeles, California, on August 13, 1952. A hearing was had at Los Angeles on August 18, 1952.[3] On August 20, 1952, the hearing officer (Wade H. Westmoreland) rendered a decision to the effect that appellant was deportable under the Act of October 16, 1918, as amended, because prior to May 15, 1949, he was a member of the

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[2] Section 1 of the Act of October 16, 1918, as amended, 64 Stat. 1006, 8 U. S. C. A. § 137, provided: "That any alien who is a member of any one of the following classes shall be excluded from admission to the United States: * * *

"(2) Aliens who, at any time, shall be or shall have been members of any of the following classes: * * *

"(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *"

Section 4 (a) of the Act of October 16, 1918, as amended, 64 Stat. 1008, 8 U. S. C. A. § 137-3 (a), provided: "Any alien who was at the time of entering the United States, or at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1(2) of this Act [8 U. S. C. A. § 137 (2)], shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act [8 U. S. C. A. § 137 to 137-8], irrespective of the time of their entry into the United States."

[3] Appellant testified at the hearing and, in the course of his testimony, admitted that he was a member of the Communist Party of the United States on October 29, 1940. Also received in evidence at the hearing was a statement made under oath by appellant to Austin E. Moe, an investigator and immigrant inspector of the Immigration and Naturalization Service, on June 19, 1952, and signed by appellant on August 13, 1952. In that statement, appellant admitted that he was a member of the Communist Party of the United States "in 1939 up to 1940, for two years."

Communist Party of the United States.[4] Appellant ap- [fol. 41] pealed from that decision, but the Board of Immigration Appeals dismissed that appeal on October 23, 1952. Accordingly, on October 29, 1952, the Attorney General, by Albert Del Guercio, an acting district director of Immigration and Naturalization, issued a warrant commanding the district enforcement officer at Los Angeles or any officer or employee of the Immigration and Naturalization Service to deport appellant to Mexico. Under that warrant, appellant has been detained in custody of an officer or officers of the Immigration and Naturalization Service at Los Angeles since October 29, 1952.

On December 1, 1952, appellant petitioned the United States District Court for the Southern District of California for a writ of habeas corpus. Thereupon, on December 1, 1952, the District Court issued an order requiring appellee to show cause why a writ of habeas corpus should not be granted. Appellee filed a return,[5] appellant filed a traverse,

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[4] The hearing officer found that appellant "voluntarily became a member of the Communist Party of the United States at Los Angeles, California, about or during 1939 and maintained that membership continuously for a period of approximately two years thereafter." Thus, in effect, the hearing officer found that, on and after May 15, 1949—the date of appellant's last entry into the United States—appellant was a member of one of the classes of aliens enumerated in §1 (2) of the Act of October 16, 1918, as amended, 64 Stat. 1006, 8 U. S. C. A. § 137 (2), namely, an alien who had been a member of the Communist Party of the United States. See footnote 2.

[5] Two exhibits (A and B) were attached to and made part of the return. Exhibit A was a copy of the warrant of deportation issued on October 29, 1952. Exhibit B consisted of originals or certified copies of the following documents: Appellant's statement of June 19, 1952, mentioned in footnote 3; the warrant of arrest issued on August 12, 1952; a transcript of proceedings had and evidence received at the hearing on August 18, 1952; the hearing officer's decision; the dismissal of appellant's appeal from that decision; and the warrant of deportation. Exhibits A and B are in the record on appeal filed here on February 12, 1953, but are not in the "transcript of record" filed here on March 26, 1953.

and the District Court entered a judgment discharging the order and denying the petition. This appeal is from that judgment.

Appellant contends that the Act of October 16, 1918, as amended, was unconstitutional; that the evidence received at the hearing on August 18, 1952, was "insufficient to sustain the deportation charge;" that appellant "was not given a fair and impartial hearing;" that the hearing on August 18, 1952, "was not legally conducted;" that "the procedure required by law was not followed;" and that [fol. 42] evidence not disclosed to appellant or his counsel was considered by the hearing officer in arriving at his decision, "thus rendering the hearing unfair."

There is no merit in any of these contentions. The Act of October 16, 1918, as amended, was constitutional.[6] The return and exhibits attached thereto [7] showed that the hearing officer's decision was amply supported by evidence, including appellant's own testimony;[8] that appellant had a fair and impartial hearing on August 18, 1952; that that hearing was legally conducted; that the procedure required by law was followed; and that the hearing officer's decision was based on evidence received in the presence of, and fully disclosed to, appellant and his counsel. Nothing to the contrary was alleged in the petition or in the traverse.

The petition stated that appellant's detention was unlawful, but that was a mere statement of a legal conclusion. Neither the petition nor the traverse stated any fact or facts warranting that conclusion or entitling appellant to a writ of habeas corpus.

Judgment affirmed.

[File endorsement omitted.]

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[6] See Galvan v. Press, 9 Cir., 201 F. 2d 302, 305, and cases there cited.

[7] See footnote 5.

[8] See footnote 3.

[fol. 43] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13705

CARLOS ALVAREZ GARCIA, etc., Appellant,

vs.

H. R. LANDON, etc., Appellee

JUDGMENT—Filed and Entered September 29, 1953

Appeal from the United States District Court for the Southern District of California, Central Division

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

[File endorsement omitted.]

[fol. 44] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORDER DENYING PETITION FOR REHEARING—November 2, 1953

On consideration thereof, and by direction of the Court, it is ordered that the petition of appellant, filed October 26, 1953, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[fols. 45-46] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 279 Misc.

CARLOS ALVAREZ GARCIA, Petitioner,

vs.

H. R. LANDON, District Director, Immigration and Naturalization Service

ORDER ALLOWING CERTIORARI—Filed June 7, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the appellate docket and placed on the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Office - Supreme Court, U. S.
FILED
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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1953

No. ~~279 MISC.~~ 118

CARLOS ALVAREZ GARCIA,

Petitioner,

vs.

H. R. LANDON, District Director, Immigration and Naturalization Service,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1953

No. .....

CARLOS ALVAREZ GARCIA,

Petitioner,

vs.

H. R. LANDON, District Director, Immigration and Naturalization Service,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Your petitioner, Carlos Alvarez Garcia, respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in order to review its judgment, affirming a judgment of the United States District Court, holding that a Writ of *Habeas Corpus* releasing petitioner from custody should not issue.

Jurisdiction.

The judgment of the Court of Appeals was entered on September 29, 1953; Petition for Rehearing denied, November 2, 1953. Its decision is unreported and therefore a copy of the opinion is attached hereto, made a part hereof and marked "Exhibit A."

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented.

Whether the Act of October 16, 1918, 8 U. S. C. 137, as amended by Section 22 of the Internal Security Act, 1950, is constitutional, either *per se*, or at least as applied to petitioner.

More particularly, as applied, is it a Bill of Attainder and an *ex post facto* law, in violation of Article I, Section 9, clause 3 of the Constitution; and does it, additionally, offend due process, as applied, in contravention of the Fifth Amendment?

The question, accordingly, is in large part identical to that awaiting ruling by this Court in *Galvan v. Press*, this term, No. 407; certiorari granted October 12, 1953.

The Court of Appeals, in ruling against petitioner's challenge of the statute, relied upon its opinion in *Galvan*.

Statutes Involved.

The Act of October 16, 1918, 8 U. S. C. 137, as amended, provides, in pertinent parts, as follows:

Section 137—same; subversive aliens

> "Any alien who is a member of any one of the following classes shall be excluded from admission to the United States:
>
> "* * *
>
> "(2) Aliens who at any time shall be or shall have been members of any of the following classes:
>
> "* * *
>
> "(c) Aliens who are members of, or affiliated with, (i) the Communist party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or other totalitarian party of any state

of the United States, of any foreign state, or of any political or geographic subdivision of any foreign state; (v) any section, subdivision, branch, affiliate, or subdivision of any association or party; or, (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear or may hereafter adopt. . . ."

Section 137-3. Deportation of Subversive Aliens.

"(a) Any alien who was at the time of entering the United States, or has been at any time thereafter a member of any one of the classes of aliens enumerated in §137(2) of this title, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of Feb. 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in §137 to 137-8 of this title, irrespective of the time of their entry into the United States."

Statement of Facts Involved.

Petitioner, a Mexican national, was lawfully admitted to the United States for permanent residence on June 15, 1922 [HOD 1-1].[1] He has resided in this country continuously ever since, save for a period of a few hours on May 15, 1949, when he visited Tijuana, Mexico [HOD 1-1].

---

[1]Because of his poverty, petitioner cannot afford to have the record printed. In a separate petition he has requested that he be allowed to proceed on typewritten record. Accordingly, the bracketed citation: [HOD 1-1] refers to the (typewritten) Deportation Hearing Officer's Decision; the numerals refer to the page and paragraph respectively at which the reference may be found. For the convenience of the court, the Hearing Officer's Decision is a part of the file of the Immigration and Naturalization Service, No. A3 852 720, which has been designated on appeal as "Exhibit B."

On August 13, 1952, petitioner was arrested by officers of the Immigration and Naturalization Service on a deportation warrant, and was charged with unlawful residence in the United States [Tr. 1].[2] At an administrative hearing held on August 18, 1952, in Los Angeles, California, petitioner admitted membership in the Communist party during the years 1939-40 [Tr. 5, 9]. As a result of this testimony, petitioner was found to be subject to deportation pursuant to the provisions of the Act of October 16, 1918, 8 U. S. C. 137, and 137-3, as amended, on the ground that he had been a member of the Communist party prior to the date of his last re-entry [HOD 3]. An order of deportation was issued against petitioner pursuant to which he was, and still is, imprisoned and restrained of his liberty at the San Pedro detention station [HOD 1].

Petitioner married a legally resident alien in 1927, and is the father of ten children, all United States born, nine of whom are minors, totally dependent upon him for support [Tr. 5].

Since 1942, he has been employed as a boilermaker's helper by the Southern Pacific Railroad in Los Angeles, California, at approximately $60.00 to $70.00 a week, these earnings constituting the family's sole source of income [Tr. 13]. Petitioner owns his own home in Los Angeles, California, entirely clear of encumbrances [Tr. 13].

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[2]For the reasons indicated in footnote 1, *supra*, the bracketed citation: [Tr. 1] refers to the (typewritten) transcript of the administrative proceedings before the Deportation Hearing Officer. The numeral refers to the page number at which the reference may be found. Note: the transcript is also included within "Exhibit B" of the appellate record.

Reasons Why Certiorari Should Be Granted.

In this, as in the *Galvan* case, *supra,* petitioner was a lawfully admitted resident of this country whose home had been established for over thirty years. As in *Galvan,* petitioner has been found subject to deportation under the provisions of 8 U. S. C. 137, 137-3, as amended,[3] upon the identical ground of *former* membership in the Communist party; which membership, incidentally, long preceded the passage of the Act now before this Court.

At present, petitioners in both cases are being unlawfully restrained of their liberty, having been confined in detention centers, because of their respective though identical deportation order.

Nowhere in the proceedings below, however, is there any claim or suggestion by the Government that the petitioner is presently, or since 1940 has been, a member of the Communist party, and in this respect, too, petitioner's case is like *Galvan's.*

Nonetheless, there are factual circumstances in petitioner's case which differ from those in *Galvan* in several significant respects:

Thus, whereas Galvan's affiliation with the Communist party seemingly arose from his ambition to become business agent of his union, petitioner's association with that organization was conceived in poverty and incubated by ignorance. The unrebutted testimony of petitioner indicates that in 1939 he had lost his job [Tr. 15]; that thereafter, with no income with which to support his wife and (then) six minor children, petitioner appealed for relief

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[3]This is the official citation for the Act of October 16, 1918, as amended, although both citations will be used interchangeably.

to an organization called the Worker's Alliance of America. His reasons for doing so appear as follows [Tr. 14]:

> "Q. Mr. Garcia, did you ever go to school? A. In Mexico, yes.
>
> Q. For how many years did you go to school? A. About three years.
>
> Q. Was that all the schooling you had? A. Yes, sir.
>
> Q. I call your attention to the fact I believe you testified that you were not working in the year 1939, is that a fact? A. Yes, sir.
>
> Q. Was there any reason why you went to the Workers Alliance meetings or to the place where they held their meetings in 1939? A. Yes, sir. My children needed some shoes and they told me where I could get them would be at the Workers Alliance, and they would help me, so that is why I went there.
>
> No, not then, but they would fight for us so that we would get what we need with the SRA.
>
> Q. Who is the SRA? A. That was the help that the state or the government would give.
>
> Q. Did the Workers Alliance help you to get shoes or food? A. Yes, sir."

Further testimony reveals that petitioner's association with the Communist party coincided in point of time and duration with his membership in the Workers' Alliance [HOD 1-2, 3]. The meetings of the two organizations were generally held at the same address, in the same meeting hall [Ex. 2, 3].[4] During mass meetings held by the

---

[4] [Ex. 2] is the seven-page (typewritten) exhibit offered by the government, and admitted as evidence, in the administrative proceedings herein, being the petitioner's sworn statement given to an investigating officer prior to his deportation hearing. The figure 3 designates the page of the exhibit to which reference is being made.

Communist party, and attended by petitioner, workers' grievances were discussed [Exs. 2-5]. But of even greater significance is that petitioner's association with both the Workers' Alliance and the Communist party terminated when he was finally able to secure re-employment [Tr. 12], a fact which serves to refute petitioner's interest in the Communist party and its alleged satellite, the Workers' Alliance.

The comparative illiteracy of petitioner (he required an interpreter at his deportation hearing because of his inability to comprehend English), the devastating impact of poverty and unemployment, the inevitable co-mingling of events, time and place during this period clearly show that petitioner resorted to affiliation with the Communist party as a relief agency through which he sought to alleviate the dire needs of his family. Cast in relation to Galvan's motivation of self-advancement, petitioner's case demonstrates even more clearly the real impact of this legislation.

Additionally, while Galvan's membership in the Communist party is set in 1944-46, the petitioner's is in 1939-40.

Accordingly, this period was, at its terminal point, two years before *Communist Party v. Peek*, 20 Cal. 2d 536 (1942), and four years before *Deming v. Communist Party*, 64 Cal. App. 2d 35 (1944), when the Supreme Court of California, and the District Court of Appeal of California in the area in which the petitioner was living, respectively, ruled that the Communist party had a right to be on the ballot in California; and when, as a result of these rulings, the Communist party was in fact upon the ballot in California, and when hundreds of California voters registered throughout California with the various

Registrars of Voters in the state, as members of the Communist party. Moreover, the period of membership by the petitioner in the Communist party was three years before the government, in *Schneiderman v. United States*, 320 U. S. 118, 148 (1943) ("with commendable candor") admitted "the presence of sharply conflicting views on the issue of force and violence as a party principle"; and when this Court reviewed the government's claims as to the nature of the Communist party and arrived at the view that there was a "tenable conclusion" (p. 157) that the Communist party did not advocate the violent overthrow of our government. Also, throughout the petitioner's affiliation with the Communist party, it was the law of the United States in the area in which petitioner was living, that the federal courts would not take judicial notice that force and violence is a party principle. (*Ex parte Fierstein*, 41 F. 2d 53 (C. C. A. 9, 1930) (and this Court so noted in *Schneiderman v. United States, supra*, at p. 148, footnote 30.)

Accordingly, it was in 1950, ten years after the petitioner's casual relationship to the Communist party that Congress *for the first time* enacted a statute declaring membership in the Communist party to be a ground for deportation. Hence, it was a decade after his termination of membership in the Communist party that the petitioner first learned that what he believed he had a right to do—a belief supported by then and thereafter numerous court decisions—namely, join the Communist party—constitutes a basis for an order of deportation, which to him "is a drastic measure and . . . the equivalent of banishment or exile. . . ." (From *Fong Haw Tan v. Phelan*, 333 U. S. 6, at 10, quoted in *Jordan v. De George*, 341 U. S. 223, 231.)

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The petitioner's case is more typical than Galvan's as to the manner of enforcement of Section 22 of the Act challenged; for it was in the '30s, rather than in the '40s, that so many, citizens and aliens alike, joined the Communist party, or one of its claimed affiliates; and did so not out of ideological sympathy with the Communist party, or from any knowledge of, or even remote apprehension of, its doctrines, but solely for need of food. The petitioner is a typical example.

But in still another way does petitioner's case depart factually from *Galvan*, namely, in the petitioner's membership in the Workers' Alliance, and the deportation hearing officer's conception of that organization.

Assuming the ability of petitioner to distinguish between the Communist party and the Workers' Alliance, it is far from clear that he understood the principles or purposes of either organization, or indeed, what constituted actual membership in any organization. Petitioner attended only eight or ten meetings of the Communist party [HOD 1-3]. In his decision, the hearing officer recalls petitioner's testimony that he never held office in the Communist party [Ex. B-1-3]; that he never paid dues to that organization [Ex. B-1-3] (although petitioner admitted paying dues to the Workers' Alliance) [Exs. 2-4]; that he had never been issued a membership card [HOD 1-3], nor could he recall having ever filed an application for one [Exs. 2, 3]; and that petitioner "terminated his membership . . . by not attending any further meetings . . ." [HOD 1-3].

But the deportation hearing officer also "noted that the Workers' Alliance was designated a Communist organization by the Attorney General pursuant to Executive Order 9835" [Ex. B-1-3], and rejects as irrelevant peti-

tioner's offer to show absence of membership in the Communist party "because of his admitted membership in the Workers' Alliance" [HOD 1-3]. Elsewhere, the hearing officer observes that petitioner "became a member of the Workers' Alliance of America in 1939 and thereafter remained a member until the end of 1940 or the beginning of 1941" [HOD 1-2].

At the time when the deportation hearing officer's opinion was rendered (Aug. 20, 1952) this Court had already expressed its doubts as to the validity of the Attorney General's designation as subversive an organization not first afforded notice or hearing, *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123 (1950) (in which four concurring members of this Court even characterized the Attorney General's designation as violative of Due Process). Subsequently there came *Wieman v. Updegraff*, 344 U. S. 183 (1952), when this Court, at page 192, recognized as a "serious question" the designation of Communist front or subversive organizations without "fair notice to those affected," noting the "significance of the differing standards employed in the preparation of those lists and their limited evidenciary use under the Federal Loyalty Program"; and *United States v. Remington*, 191 F. 2d 246 (1951), at page 252, where the Court of Appeals for the Second Circuit frowned upon such lists as "a purely hearsay declaration by the Attorney General" having "no probative value."

It is not even certain that the deportation hearing officer realized that Executive Order 9835 was intended to pertain only to federal employees in the Government's Loyalty Program (*Joint Anti-Fascist Refugee Committee v. McGrath, supra; Wieman v. Updegraff, supra*). Nor is it any more clear to what extent the hearing officer's

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decision was influenced by petitioner's membership in the Workers' Alliance, although had these references not been considered important to the hearing officer, why would he have then laid such great stress on it?

In any event, both *Galvan* and the instant case demonstrate clear hardship. In *Galvan,* the Court of Appeals recognized it, stating: "the law is harsh . . ." (*Galvan v. Press,* 201 F. 2d 302, 306). In this case the hearing officer also acknowledged hardship commenting: ". . . it appears that his deportation would result in a serious economic detriment to his . . . spouse and . . . children" [HOD 2-2]. It is the obliquity of this law, however, that petitioner is without even that relief afforded deportable aliens in other categories of transgression (8 U. S. C. Sec. 155, 39 Stat. 889). Here the evidence shows conclusively that petitioner led an exemplary life prior to his present detention. There is no record of past criminal convictions [Tr. 13]. During World War II he did not seek exemption from military service, and indeed, he held himself in readiness for military call [Tr. 13].

Nevertheless, membership in the Communist party disqualifies him from applying under the lenitive provisions of the Act which empower the Attorney General with the right to suspend the deportation of an alien in certain cases of hardship (8 U. S. C. Sec. 155, 39 Stat. 889). Thus, does the Act of October 16, 1918, as amended, reach even the innocent—here, the petitioner's wife and nine minor children—by imposing upon them the unhappy choice of somehow thriving without his support, and without any prospect of his return, or to abandon their home, friends and way of life to emigrate with petitioner to what must be—for the children, at least—a strange and foreign country.

Accordingly, as applied to petitioner, the statute challenged is a Bill of Attainder and an *ex post facto* law, in effect; and the decision of the Court of Appeals below, ruling to the contrary, is probably at variance with the decisions of this Court in *United States v. Lovett*, 328 U. S. 303; *Cummings v. Missouri*, 4 Wall. 277, and *Ex parte Garland*, 4 Wall. 333.

This Court has recently noted its familiarity with these decisions; accordingly we reserve discussion of them as applied to the petitioner to another time, if that time ever comes, namely, when (or rather if) this Court grants certiorari.

Finally, and most importantly, in one other particular does the petitioner's case differ from *Galvan;* in the latter case there is the issue as to whether the Administrative Procedures Act applies to the Immigration Service, and whether or not Galvan was denied a hearing before an independent hearing officer within the requirements of the Administrative Procedures Act; more specifically, whether the repeal by Congress, by Public Law 414, 82nd Congress (66 Stat. at 820, par. 47, Sec. 403 of the Immigration and Naturalization Act), of the rider to the Independent Appropriations Act of 1951 (Public Law 843, 81st Congress, 64 Stat. 1044, 8 U. S. C. 1552), has the effect of restoring the ruling of this Court in *Sung v. McGrath*, 339 U. S. 33.

The foregoing point, raised in *Galvan* (see record from Clerk of the Court of Appeals in *Galvan v. Press*, p. 2 (Pet. for Writ of *Habeas Corpus* in behalf of Galvan), and p. 22 (Statement of Points to Be Relied Upon)) is to be urged in that case; it will not be presented in the instant case for it was not raised below.

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Accordingly, this Court may reverse the judgment in *Galvan* on this point, without reaching the grave constitutional questions also in issue therein and herein. The constitutional question does, however, require determination by this Court; for the fate of hundreds of aliens under orders of deportation or awaiting deportation hearings for past membership in the Communist party awaits a ruling by this Court on the constitutional issues.

This case would seem to offer an appropriate vehicle for such determination.

Conclusion.

The writ of certiorari should be granted, and the order for deportation be set aside.

Respectfully submitted,

HARRY WOLPIN,
A. L. WIRIN,
Counsel for Petitioner.

HUGH R. MANES,
Of Counsel.

EXHIBIT "A."

United States Court of Appeals for the Ninth Circuit.

Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez, Appellant, vs. H. R. Landon, District Director of Immigration and Naturalization, Appellee. No. 13,705.

Sep. 29, 1953.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before Mathews, Healy and Orr, Circuit Judges.

Mathews, Circuit Judge.

Appellant, Carlos Alvarez Garcia, also known as Carlos Garcia-Alvarez, a Mexican alien, was lawfully admitted to the United States for permanent residence on June 15, 1922. Appellant has resided in the United States continuously since June 15, 1922, except for visits to Mexico between June 15, 1922, and May 15, 1949. After each such visit, appellant returned to and entered the United States. He last entered the United States on May 15, 1949.

On August 12, 1952, a warrant for appellant's arrest was issued by appellee, H. R. Landon, a district director of Immigration and Naturalization. That warrant stated, in substance, that, from evidence submitted to appellee, it appeared that appellant was deportable under the Act of October 16, 1918, as amended,[1] because, prior to May

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[1]1. As used in this opinion, the term "Act of October 16, 1918, as amended," means the Act of October 16, 1918, c. 186, 40 Stat. 1012, as amended by §22 of the Internal Security Act of September 23, 1950, c. 1024, 64 Stat. 1006-1010, 8 U. S. C. A. §§ 137 to 137-8. The Act of October 16, 1918, as amended, was repealed by §403(a) of the Immigration and Nationality Act of June 27, 1952, c. 477, 66 Stat. 279, effective December 24, 1952, but this case is not affected by the repeal. See §405(a) of the Immigration and Nationality Act, 66 Stat. 280.

15, 1949, he was a member of the Communist Party of the United States.[2] Under that warrant, appellant was arrested at Los Angeles, California, on August 13, 1952. A hearing was had at Los Angeles on August 18, 1952.[3] On August 20, 1952, the hearing officer (Wade H. Westmoreland) rendered a decision to the effect that appellant was deportable under the Act of October 16, 1918, as amended, because prior to May 15, 1949, he was a member

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[2]Section 1 of the Act of October 16, 1918, as amended, 64 Stat 1006, 8 U. S. C. A. §137, provided: "That any alien who is a member of any one of the following classes shall be excluded from admission to the United States: * * *

"(2) Aliens who, at any time, shall be or shall have been members of any of the following classes: * * *

"(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *"

Section 4(a) of the Act of October 16, 1918, as amended, 64 Stat. 1008, 8 U. S. C. A. §137-3(a), provided: "Any alien who was at the time of entering the United States, or at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1(2) of this Act [8 U. S. C. A. §137(2)], shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act [8 U. S. C. A. §137 to 137-8], irrespective of the time of their entry into the United States."

[3]Appellant testified at the hearing and, in the course of his testimony, admitted that he was a member of the Communist Party of the United States on October 29, 1940. Also received in evidence at the hearing was a statement made under oath by appellant to Austin E. Moe, an investigator and immigrant inspector of the Immigration and Naturalization Service, on June 19, 1952, and signed by appellant on August 13, 1952. In that statement appellant admitted that he was a member of the Communist Party of the United States "in 1939 up to 1940, for two years."

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of the Communist Party of the United States.[4] Appellant appealed from that decision, but the Board of Immigration Appeals dismissed that appeal on October 23, 1952. Accordingly, on October 29, 1952, the Attorney General, by Albert Del Guercio, an acting district director of Immigration and Naturalization, issued a warrant commanding the district enforcement officer at Los Angeles or any officer or employee of the Immigration and Naturalization Service to deport appellant to Mexico. Under that warrant, appellant has been detained in custody of an officer or officers of the Immigration and Naturalization Service at Los Angeles since October 29, 1952.

On December 1, 1952, appellant petitioned the United States District Court for the Southern District of California for a writ of habeas corpus. Thereupon, on December 1, 1952, the District Court issued an order requiring appellee to show cause why a writ of habeas

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[4]The hearing officer found that appellant "voluntarily became a member of the Communist Party of the United States at Los Angeles, California, about or during 1939 and maintained that membership continuously for a period of approximately two years thereafter." Thus, in effect, the hearing officer found that, on and after May 15, 1953—the date of appellant's last entry into the United States—appellant was a member of one of the classes of aliens enumerated in §1(2) of the Act of October 16, 1918, as amended, 64 Stat. 1006, 8 U. S. C. A. §137(2), namely, an alien who had been a member of the Communist Party of the United States. See footnote 2.

corpus should not be granted. Appellee filed a return,[5] appellant filed a traverse, and the District Court entered a judgment discharging the order and denying the petition. This appeal is from that judgment.

Appellant contends that the Act of October 16, 1918, as amended, was unconstitutional; that the evidence received as the hearing on August 18, 1952, was "insufficient to sustain the deportation charge"; that appellant "was not given a fair and impartial hearing"; that the hearing on August 18, 1952, "was not legally conducted"; that "the procedure required by law was not followed"; and that evidence not disclosed to appellant or his counsel was considered by the hearing officer in arriving at his decision "thus rendering the hearing unfair."

There is no merit in any of these contentions. The Act of October 16, 1918, as amended, was constitutional.[6] The return and exhibits attached thereto[7] showed that the

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[5]Two exhibits (A and B) were attached to and made part of the return. Exhibit A was a copy of the warrant of deportation issued on October 29, 1952. Exhibit B consisted of originals or certified copies of the following documents: Appellant's statement of June 19, 1952, mentioned in footnote 3; the warrant of arrest issued on August 12, 1952; a transcript of proceedings had and evidence received at the hearing on August 18, 1952; the hearing officer's decision; the dismissal of appellant's appeal from that decision; and the warrant of deportation. Exhibits A and B are in the record on appeal filed here on February 12, 1953, but are not in the "transcript of record" filed here on March 26, 1953.

[6]See Galvin v. Press, 9 Cir., 201 F. 2d 302, 305, and cases there cited.

[7]See footnote 5.

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hearing officer's decision was amply supported by evidence, including appellant's own testimony;[8] that appellant had a fair and impartial hearing on August 18, 1952; that that hearing was legally conducted; that the procedure required by law was followed; and that the hearing officer's decision was based on evidence received in the presence of, and fully disclosed to, appellant and his counsel. Nothing to the contrary was alleged in the petition or in the traverse.

The petition stated that appellant's detention was unlawful, but that was a mere statement of a legal conclusion. Neither the petition nor the traverse stated any fact or facts warranting that conclusion or entitling appellant to a writ of habeas corpus.

Judgment affirmed.

(Endorsed:) Opinion. Filed Sep. 29, 1953. Paul P. O'Brien, Clerk.

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[8]See footnote 3.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 279 Misc.

CARLOS ALVAREZ GARCIA, PETITIONER

v.

H. R. LANDON, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals (R. 39-42) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 29, 1953 (R. 43). A petition for rehearing was denied on November 2, 1953 (R. 44). The petition for a writ of certiorari was filed on December 2, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 22 of the Internal Security Act of 1950, providing for the deportation of aliens who have been members of the Communist Party at any time after entering the United States, is invalid as violating the *ex post facto*, bill of attainder, or due process provisions of the Constitution.

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950, the Act of October 16, 1918 (40 Stat. 1012), provided, at the time involved in this case, as follows (8 U.S.C., Supp. V):[1]

§ 137. * * *

Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

* * * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * * (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political

[1] The statutory provisions here involved were repealed by Sec. 403(a)(16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279) which recodified and reenacted these provisions without material change. See *id.*, Sec. 241(a), 66 Stat. 204.

or geographical subdivision of any foreign state * * *;

* * * * *

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law: * * *;

(G) Aliens who write * * * any written or printed matter * * * advocating or teaching * * * (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; * * *;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, * * * written or printed matter of the character described in subparagraph (G),[2]

§ 137-3 * * *

(a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 137(2) of this title, shall, upon the warrant of the At-

[2] The substance of subsections (F), (G), and (H) of 8 U.S.C. (Supp. V) 137(2) was, at the time of the original warrant of arrest in the instant case, contained in 8 U.S.C. (1946 ed.) 137(c), (d), and (e). Subsection (C) derived from Section 22 of the Internal Security Act of 1950, 64 Stat. 1006.

torney General, be taken into custody and deported * * *.

STATEMENT

Petitioner, a Mexican national, was lawfully admitted to the United States for permanent residence on June 15, 1922 (Ex. B, p. 49).[3] He has resided continuously in this country since that date, except for visits to Mexico. His last return and consequently his last entry into the United States was on May 15, 1949, at San Ysidro, California (Ex. B, pp. 29, 34).

A deportation warrant for the arrest of petitioner was issued on August 12, 1952, charging, in substance, that petitioner was subject to deportation under the Act of October 16, 1918, as amended (8 U.S.C. (Supp. V) § 137), as an alien who before his last entry into the United States had been a member of the Communist Party of the United States (Ex. B, p. 55).[4]

On August 18, 1952, a hearing was held under the warrant at which petitioner was represented by counsel. Testifying at the hearing, petitioner admitted that he had been a member of the Communist Party in 1939 and 1940 (Ex. B, pp. 40, 41).

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[3] The immigration file was introduced in evidence in the District Court as Exhibit B. It comprises pages 26-55 of the Transcript of Record in the Court of Appeals, which has been certified to this Court as an exhibit under Rule 38 of the Revised Rules of the Supreme Court.

[4] 8 U.S.C. (Supp. V) § 137-3(a) made subject to deportation any alien who at the time of entry or thereafter was, *inter alia*, a member of any one of the classes of aliens enumerated in Section 137(2). That section referred to aliens who "shall be or *shall have been* members of * * * (C) * * * (i) the Communist Party of the United States * * *" [emphasis added].

A sworn statement made by petitioner to an investigator and immigrant inspector of the Immigration and Naturalization Service on June 19, 1952, was introduced in evidence (Ex. B, pp. 48-54). In that statement petitioner admitted that he had been a member of the Communist Party of the United States "in 1939 up to 1940, for two years" (Ex. B, p. 50). On August 20, 1953, the hearing officer rendered a decision to the effect that petitioner was deportable under the Act of October 16, 1918, as amended, because prior to May 15, 1949, the date of his last re-entry, he was a member of the Communist Party of the United States (Ex. B, pp. 29-31). Specifically, the hearing officer found that petitioner "voluntarily became a member of the Communist Party of the United States at Los Angeles, California, about or during 1939 and maintained that membership for a period of approximately two years thereafter" (Ex. B, p. 30). Petitioner appealed from that decision, but the Board of Imigration Appeals dismissed the appeal on October 23, 1952 (Ex. B, p. 28). Thereafter, on October 29, 1952, a warrant of deportation issued against petitioner, and since that date petitioner has been detained in the custody of the District Director of the Immigration and Naturalization Service at Los Angeles (Ex. B, p. 27).

On December 1, 1952, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of California, in which it was alleged that petitioner was being unlawfully detained (R. 1-5). On Decem-

ber 18, 1952, the District Court denied the petition for a writ of habeas corpus (R. 25).

On appeal, the Court of Appeals for the Ninth Circuit unanimously affirmed (R. 39-42).

ARGUMENT

As petitioner states (Pet. 2), the sole legal question presented by this case will be governed by the Court's decision in *Galvan* v. *Press*, No. 407, this Term. The factual distinctions between this and the *Galvan* case which petitioner alleges do not present any different question for decision by this Court. If Section 22 of the Internal Security Act of 1950 is constitutional, petitioner is deportable even though he allegedly joined the Communist Party out of poverty (Pet. 5-7), for the statute does not distinguish between alien Communists on grounds of their motive in entering the Party. Similarly, no distinction is made on the basis of time of membership (Pet. 7-9), although if such a distinction were made, the fact that petitioner's membership terminated in 1940, just after this Court's decision in *Kessler* v. *Strecker*, 307 U. S. 22, in 1939, would, if anything, tend to sustain the application of the statute to him. See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 593-596, where this Court observed that at that time alien Communists were expelled en masse as a matter of Party strategy.

The hearing officer was under no misapprehension as to the relationship between the Workers Alliance and the Communist Party (Pet. 9-11). The distinction between the two organizations was

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carefully brought out in the statement given by petitioner on June 19, 1952, which was introduced in evidence at the deportation hearing.[5] At the deportation hearing the difference between the two organizations was noted and petitioner was asked why, in his alien registration form executed in October 1940, he listed membership in the Workers Alliance and not in the Communist Party (Ex. B, pp. 41-42). The hearing officer's decision unequivocally states that petitioner belonged to both organizations.

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[5] The following dialogue appears in the transcript of the June 19th statement (Ex. B, pp. 50-52):

"Q. Have you in the past been a member of the Communist Party of the United States? A. Yes.

"Q. During what period of time were you a member of the Communist Party of the United States? A. I was in 1939 up to 1940, for two years.

"Q. Where were you a member of the Communist Party of the United States? A. Los Angeles.

* * *

"Q. Were you also a member of the Workers Alliance at that time? A. Yes.

"Q. During what period of time did your membership extend in the Workers Alliance? A. 1938 to 1940.

"Q. Did you join the Workers Alliance before you joined the Communist Party? A. I joined the Workers Alliance before I joined the Communist Party.

"Q. Did the Workers Alliance and the Communist Party meet in the same place? A. Yes.

"Q. Did you attend the meetings of each organization? A. I went there to meetings of the Communist Party and the Workers Alliance.

"Q. How were you able to distinguish between the meetings of the Workers Alliance and the Communist Party? A. The Alliance met on Friday every two weeks and the Communist Party met only once a month, on Tuesday or Wednesday, I don't remember which."

* * *

"Q. Did you understand that the Communist Party and the Workers Alliance were different organizations? A. Yes."

Thus, there is no material factual distinction between this case and *Galvan* v. *Press*. The sole question here raised, the constitutionality of Section 22 of the Internal Security Act of 1950, will be disposed of when this Court decides the *Galvan* case.[6]

CONCLUSION

We respectfully suggest, therefore, that this Court defer decision on the instant petition for certiorari until decision is reached in *Galvan* v. *Press*.

ROBERT L. STERN,
Acting Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
HOWARD ADLER, JR.,
Attorneys.

DECEMBER, 1953.

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[6] Counsel for petitioner, one of whom is counsel for Galvan, state (Pet. 12) that Galvan will also urge that he should have been given a hearing before an independent hearing officer appointed pursuant to the requirements of the Administrative Procedure Act. However, the brief in *Galvan* does not discuss this point and, in any case, we doubt that the issue is properly before the Court in *Galvan*, since it was not urged in the Court of Appeals and is not raised in the petition for a writ of certiorari. See Brief for the Respondents, *Tom We Shung* v. *Brownell*, No. 241, this Term, p. 14.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 118

CARLOS ALVAREZ GARCIA, PETITIONER

v.

H. R. LANDON, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

This case involves a habeas corpus proceeding by which petitioner, a Mexican national who had been lawfully admitted to the United States in 1922, challenged the validity of a warrant dated October 29, 1952, directing his deportation on the ground that he had been a member of the Communist Party of the United States in 1939 and 1940. The petition for a writ of certiorari, which sought review of a judgment sustaining an order dismissing the petition for habeas corpus, was filed December 2, 1953, and was granted June 7, 1954. 347 U. S. 1011.

Under the Internal Security Act of 1950, the discretionary relief of suspension of deportation was not available for aliens found to have been members of the Communist Party. However, under the Immigration and Nationality Act, which became effective December 24, 1952, after the warrant of deportation had issued in this case, such relief can be granted to aliens who meet the requirements set forth in Section 244 (a) and (c) of that Act. In addition, this Court, in its opinion in *Galvan* v. *Press,* 347 U. S. 522, in sustaining the constitutionality of Section 22 of the Internal Security Act of 1950 (which rendered subject to deportation aliens who had been members of the Communist Party), indicated that there might be situations where membership would be "so nominal as to keep an alien out of the deportable class." 347 U. S. at 527.

In view of these two considerations, the Immigration and Naturalization Service, on August 11, 1954, made a motion before the Board of Immigration Appeals to withdraw the outstanding warrant of deportation and, in the light of this Court's opinion in the *Galvan* case, to have the proceedings reopened to afford petitioner an opportunity to present such further evidence as he wished on the question of whether his membership in the Communist Party was voluntary, as well as to file an application for discretionary relief under the 1952 Act. Petitioner did not oppose

the motion. On September 21, 1954, the Board of Immigration Appeals granted the motion and ordered that the warrant of deportation be withdrawn. Copies of the Service's motion and the Board's order are appended *infra*.

Since, therefore, the order which petitioner attacks is no longer outstanding, and since petitioner cannot be held in custody thereunder, it is suggested that the cause is moot. Cf. *Eagles* v. *Samuels*, 329 U. S. 304, 306; *McNally* v. *Hill*, 293 U. S. 131. Accordingly, the judgment below should be vacated and the case remanded to the District Court with directions to dismiss the habeas corpus petition upon the ground that the cause is moot. Cf. *Sawyer* v. *Dollar*, 344 U. S. 806; *United States* v. *Munsingwear, Inc.*, 340 U. S. 36.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

OCTOBER 1954.

APPENDIX

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

File: A-3852720—Los Angeles

AUG 11 1954
(COMMR'S MOTION)

In re: CARLOS GARCIA-ALVAREZ aka CARLOS ALVAREZ-GARCIA

IN DEPORTATION PROCEEDINGS

In Behalf of Respondent:
Harry Wolpin, Esquire
1809 Canyon Drive
Los Angeles 28, California

Charges:
Warrant: Act of October 16, 1918, as amended—Prior to entry member of Communist Party of United States
Lodged: None

Application: None

MOTION TO BOARD OF IMMIGRATION APPEALS

DISCUSSION: On August 20, 1952, the Hearing Officer found respondent deportable on the charge shown above and entered an order directing respondent's deportation from the United States. Thereafter, the alien appealed to the Board of Immigration Appeals. On October 23, 1952, the

Board dismissed the appeal from the decision of the Hearing Officer. Warrant of deportation is outstanding.

Briefly, the facts in the case are as follows. The respondent is a 50-year-old married male, native and citizen of Mexico, who was admitted to the United States for permanent residence in 1922. He is married to a lawfully resident alien and is the father of ten native-born United States citizen children. He last entered the United States on May 15, 1949, at San Ysidro, California, following a brief visit to Mexico. At the hearing under the warrant of arrest the respondent testified that he had joined the Communist Party of the United States at Los Angeles, California, about 1939 and that he remained a member of the Party until about the end of 1940 or the beginning of 1941. He has denied membership in the Communist Party or any affiliated organization since that time.

The service is of the opinion that certain aspects of this case deserve further consideration and is, therefore, filing this motion with the Board. First, in the light of the court's language in *Galvan* v. *Press,* 347 U. S. 522, it is believed that respondent should be allowed an opportunity to present such further evidence as he wishes or may have available bearing on the question of whether his membership in the Communist Party was voluntary. This issue goes to the entire basis of his deportability. Secondly, it is felt that he should also have an opportunity to file an application for discretionary relief under the provisions of the Immigration and Nationality Act.

At the time this case was preciously considered by the Hearing Officer and the Board of Immigration Appeals, the Immigration and Nationality Act, which provides relief for former members of the Communist Party in certain circumstances, had not yet become effective and no relief could be granted the respondent under Section 19 (c) of the Immigration Act of 1917 by reason of his having been found deportable as a member of one of the classes specified in Section 19 (c) of the said Act. Whether the respondent is eligible for relief under the 1952 statute can best be determined after he has filed an application therefor and a hearing is held on the same.

MOTION IS HEREBY MADE TO THE BOARD OF IMMIGRATION APPEALS that the outstanding order and warrant of deportation be withdrawn and that the proceedings be reopened for the purposes outlined above.

[sg.] A. C. DEVANEY
Assistant Commissioner
Inspections and Examinations Division

SBR
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U. S. DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

SEP 21 1954

In the Matter of CARLOS GARCIA-ALVAREZ aka CARLOS ALVAREZ-GARCIA

File: A-3852720-Los Angeles

IN DEPORTATION PROCEEDINGS

In Behalf of Respondent:
Harry Wolpin, Esquire
1809 Canyon Drive
Los Angeles 28, California

This case comes before us on motion by the Commissioner to reopen the record. The last order entered herein was dated October 23, 1952, when we dismissed appeal from decision of the Hearing Officer directing that the respondent be deported on a charge of past membership in the Communist Party. Subsequent thereto the Supreme Court rendered its decision in the case of *Galvan* v. *Press* and there has been enacted the Immigration and Nationality Act broadening the provisions for discretionary relief. Upon consideration of the record and the motion it is concluded that the motion should be granted.

ORDER: It is ordered that the order and warrant of deportation be withdrawn and the motion be granted.

[sg.] THOS G. FINUCANE
Chairman

U. S. GOVERNMENT PRINTING OFFICE: 1954

NOVEMBER 8, 1954.

Decisions Per Curiam.

No. 118. GARCIA *v.* LANDON, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE. Certiorari, 347 U. S. 1011, to the United States Court of Appeals for the Ninth Circuit. *Per Curiam:* The judgment of the Court of Appeals is vacated and the case is remanded to the District Court with directions to dismiss the petition

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for writ of habeas corpus upon the ground that the cause is moot. *Harry Wolpin* and *A. L. Wirin* for petitioner. *Solicitor General Sobeloff* for respondent. Reported below: 207 F. 2d 693.